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Date: 22/07/2009

CIRCULAR

Sub : Rule passed by the Hon'ble High Court of Judicature at Mumbai in
PIL No. 42 of 2009 filed by Dighi Koli Samaj Mumbai Rahivasi Sangh
V/s MPCB & Ors.

Ref. :- Order passed by the Hon'ble High Court, Mumbai Bench in the above
Matter dtd. 9.7.2009

The Government of India, Ministry of Environment and Forest, New Delhi, vide its Notification dtd. 30th September, 2005 granted environmental clearance for development of Dighi Port Development Project (Phase - I) in terms of Coastal Regulations Zone Notification, 1991, as amended from time to time, subject to effective implementation and compliance of the conditions stated in the said Notification. A number of conditions were imposed upon Dighi Port Limited for development of Dighi Port which related to various aspects including socio-economic development welfare measures in the area, including providing of drinking water scheme, vocational training fishery related development programs, compliance with various provisions of law and the Notification with particular reference to obtaining the requisite consent for discharge of effluents and emissions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 from the Maharashtra Pollution Control Board before commissioning of the project.

The Petitioner has filed the above PIL on the grounds that, the clearance granted by the M.o.E.F., Govt. of India, to Dighi Port Limited should be set aside and development of the project should be stopped forthwith.

The said PIL was heard by Coram : Swatanter Kumar, C.J. & S.C. Dharmadhikari, J on 11.6.2009 and pronounced on 9.7.2009. A Rule passed in the above matter is reproduced hereunder :-

Para 21 of the Judgement :-

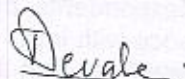
The concept of public hearing is intended to achieve a greater objectivity. The affected persons and even other persons are entitled to raise objection with regard to grant of sanction / environmental clearance to an applicant in the event of the notified projects. As already noticed, there is no dispute raked up before us by any party that grant of public hearing was necessary. In fact, according to the Petitioner, this was done cosmetically, while, according to the Respondents, they had strictly complied with the said requirement of public hearing in accordance with law. With reference to the provisions afore-indicated, the intent of the framers appear to be that the public hearing should be granted at the site or the nearby places in close proximity. The purpose is to enable particularly the affected persons to put forward their suggestions and objections which must be treated very objectively by the

authorities concerned. It is not public hearing of objections but is public consultation. The expression "public consultation" conveys a meaning of taking public into confidence to ensure that the environment or ecology of the area is not so disturbed that it would adversely affect persons living around the area. From the reply affidavits filed by the respective Respondents, it appears that the above hearing did not take place at the site or in the areas nearby but at the district headquarters. In fact, the public hearing was held at Collector's office in Raigad-Alibag which are informed is nearly 100 kms away from the site in question or village Dighi. This appears to us not proper compliance to the requirements of law. It would have been more appropriate for the authorities to hear the people on the site in terms of the above provisions or at best in the public places of the village concerned or at a place which was not so far away from the site. Public consultation would not only include hearing objections but even the suggestions which may be made by the affected persons or even any other person having an interest. It is not strange or unusual that public spirited persons connected with environment and ecology of the area could make suggestions which may prove useful and would help in implementation of the project with better results ensuring greater protection to environment. After such hearing, the clearance notification was issued. **There is some irregularity in compliance with the provisions of public consultation**, but that essentially would not violate the final Notification issued by the authorities as the Petitioners were heard in the year 2004 and, firstly they cared to come to the courts in the year 2009 and, secondly, no prejudice has been demonstrated in the Writ Petition which has resulted from this particular irregularity. The irregularity is not per se an illegality so as to vitiate the final order in as much as admittedly hearings were held and even the Petitioner and his representatives participated in those hearings, but consultations were not held on the site or nearby. It would have been better that the people were heard at the site as well as at the head quarters to achieve better results and for proper adherence to the provisions of the Notification issued by the Government itself.

Para 26 of the Judgement (Rule passed by the Hon'ble High Court regarding implementation of the EIA Notification dtd. 14th September, 2006) :-

In view of the above discussion, we have no hesitation in coming to the conclusion that the Notification is not vitiated for this partial irregularity. However, we direct the State Government to conduct public consultation (public hearing) in all such cases relating to environmental clearance for notified projects at the site or nearby the area of the site, as, that is the true import of the provisions contained in the Notification dtd. 14th September, 2006 issued by the Government of India. This direction is necessary in order to achieve the object and purpose of the Notification. We order accordingly.

You are therefore requested to comply with the order passed by the Hon'ble High Court in the above matter scrupulously, failing which there will be contempt of above order. A detailed order is available on website of the Bombay High Court and can be downloaded from the website of the Bombay High Court. This is also being placed on our website in due course.


(D. T. Devale)
Sr. Law Officer