

M/S Electrothem (India) Ltd vs Patel Vipulkumar Ramjibhai & Ors on 2 August, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3563, 2016 (9) SCC 300, AIR 2016 SC (CIVIL) 2406, (2016) 165 ALLINDCAS 55 (SC), (2016) 4 CIVLJ 197, (2016) 3 RECCIVR 1002, (2016) 7 SCALE 536, (2017) 1 WLC(SC)CVL 591, 2016 (4) KCCR SN 516 (SC), (2016) 5 BOM CR 372

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Bench: T.S. Thakur, R. Banumathi, Uday Umesh Lalit

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7222 of 2016
(Arising out of SLP (Civil) No.16860 of 2012)

M/s Electrothem (India) Ltd.

...Appellant

Versus

Patel Vipulkumar Ramjibhai & Ors.

... Respondents

J U D G M E N T

Uday Umesh Lalit, J.

Leave granted.

This appeal challenges the judgment and order dated 11.05.2012 passed by the High Court of Gujarat allowing Special Civil Application No.5986/2010 setting aside the Environmental Clearance dated 27.01.2010 and directing that the operations of the entire plant of the Appellant be stopped

and that the operations could be continued only after fresh Environmental Clearance was accorded in its favour by the Ministry of Environment and Forests and Union of India.

The Environment Impact Assessment Notification dated 27.01.1994 issued by the Central Government in exercise of powers conferred by sub-section(1) and Clause V of sub-section(2) of Section 3 of the Environment (Protection) Act, 1986 read with Clause(d) of sub-rule(2) of Rule 5 of the Environment (Protection) Rules, 1986 stipulated inter alia that in case of expansion or modernization of any activity, if pollution load exceeded the existing one or the new project was listed in Schedule I to the said Notification, such activity would not be undertaken unless the Environmental Clearance was accorded by the Central Government. Same thought was carried and finds expressly stipulated in the Notification dated 14.09.2006 issued by the Central Government in supersession of the Notification dated 27.01.1994. The Notification dated 14.09.2006 directed that the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the Notification entailing capacity addition with change in process and or technology would be undertaken only after prior Environmental Clearance from the Central Government or as the case may be by the State Level Environment Impact Assessment Authority. Clauses 2 and 4 of the Notification deal with requirements of prior Environmental Clearance and Categorization of Projects and Activities respectively. Under Clause 7 Environmental Clearance process comprises of four stages in sequential order, namely, (1)- Screening, (2) Scoping, (3) Public Consultation and (4) Appraisal.

4. The Appellant set up a Steel Plant at Village Samakhiyali, for manufacturing various products after having received No Objection Certificate from Gujarat Pollution Control Board (“GPCB”, for short) on 25.02.2005, which thereafter granted consent vide Authorization Order dated 10.11.2005 for manufacture of Pig Iron, Steel Billets/Slabs, Steel Bars and Rods, etc.

5. The Appellant had set up the Plant and begun manufacturing process and later by its letter dated 30.11.2007 applied for Environmental Clearance. On 20.02.2008 the Government of India, Ministry of Environment and Forests granted Environmental Clearance, the relevant portions of the Clearance being:-

“2.0 The Ministry of Environment and Forests has examined the application. It is noted M/s. Electrotherm (India) Ltd. have proposed expansion of Pig Iron Plant (150 to 350 TPD) with Captive Lignite/Coal char based Power Plant (24 MW) and WHRB (6MW) at Samakhiyali, Bhachhu, Kutch, Gujarat. Total project area is 100.6276 ha. and expansion will be carried out in 20.79 ha. No National Park of Wildlife Sanctuary is located within 10 km

..... Total cost of project is Rs. 90.00 Crores.....

3.0 Iron ore will be reduced in a Blast Furnace. ESP dust collectors, venture scrubbers, bag letters will be provided to control are emissions from WHRB, AFBSC, Boiler, Crusher House etc. Gas will be cleaned in GCP. Total water requirement of 650 M/day will be supplied by Gujarat water Supply and Sewage Board (GWSSB) Zero Discharge will be adopted. Fine particles of coke, iron ore and

ETP sludge will be recycled and reused in the process. BF Slag will be sold to cement manufacturers or used for road construction. Fly ash will be used in the captive brick manufacturing plant. Char from the sponge iron plant will be 100% utilized in the FBC boiler.

4.0 Public hearing/Public consultation meeting was held on 12th June, 2007.

5.0 The Ministry of Environment and Forests hereby accords Environmental Clearance the above project under EIA Notification dated 14th September, 2006 subject to strict compliance of the following conditions.....” The Environmental Clearance then sets out certain specific conditions and general conditions.

6. The Appellant thereafter, applied for expansion of Steel Plant. The matter was dealt with in the Ninety First Meeting of the Re-constituted Expert Appraisal Committee (Industry) held during 9-11 February, 2009.

The Appellant had informed that Public hearing for the previous project was held on 12.06.2007 and that the proposed expansion would be within the existing industrial premises and no extra land would be required. The matter was dealt with by the Committee and the relevant minutes were :-

“PAs vide letter dated 29th December, 2008 informed that Public hearing for the previous project was held on 12th June, 2007, for which, Environmental Clearance was accorded vide Ministry’s letter No.J- 11011/503/2006/IA-II(I) dated 20th February, 2008. It is also informed that proposed expansion will be within the existing industrial premises and no extra land will be required.

M/s Electrotherm (India) Ltd. have proposed for the expansion of Steel plant at Milestone No. 310 of NH No. 8A, Village Samkhiyali, Taluka Bhachau, Kutch, Gujarat. PAs have mentioned that Sponge Iron, DI Pipes, Steel Rolling Mill, Induction Furnace are existing after getting ‘NOC’ from GPCB. Environment clearance for Pig Iron Plant and CPP (30 MW) is accorded vide letter dated 20th February, 2008. Expansion will be carried out in 20.24 ha within the existing industrial premises of 100.62 ha. No National Park/Wild Life Sanctuary/Reserve Forest is located within 10 km radius of the project site. Total cost of the project is Rs.274.00 Crores. Rs.5.89 Crores and Rs.0.40 Crores will be earmarked towards total capital cost and recurring cost/annum for environmental pollution control measures.
.....

Iron Ore (65,400 MTPM), Limestone (8,856 MTPM), Manganese Ore (465 MTPM), Quartzite (1,068 MTPM), Dolomite (2,471 MTPM) and Lime Dolofines (968 MTPM) will be used as raw material.

Sponge Iron will be produced using DRI method. Iron oxide will be chemically reduced to ‘hot metal’ in Blast furnace. Sinter Plant will use iron ore fines, mill scales and flue dust. Sinter produced will be used in BF Billets from Steel Melt Shop (SMS) will be put into Billet in Reheating Furnace.

Reheated Billets will be used to manufacture TMT Bars. Pig Iron will be heated in Induction Furnace (IF) to prepare Duct Iron pipes. Scrap and sponge iron will be changed to IF and then poured to Ladle Refining Furnace (LRF) and then molten material will be changed to continuous casting machine (CCM) to produce billets, rods and bars. Waste gases from DRI will be used in WHRB. No AFBC is proposed during expansion.

ESP will be provided to WHRB. Waste gases will be used in Waste Heat Recovery Boiler (WHRB) before disposing of through stack. Fugitive emissions will be controlled by dust suppression measures. Gas cleaning system will be provided to BF. Bag filters/wet cleaning system will be provided to BF. Bag house will be provided to Pig Iron Plant. ESP will be provided to Sinter plant. Multi-cyclone will be provided to re-heating furnace. Bag filters will be provided to product handling and transfer points. Dust suppression system i.e. water sprinkling will be provided to conveyer, transfer points, loading and unloading areas.

Total water requirement from Gujarat Water Infrastructure Ltd. (GWIL) will be 2,165 m³/day. PAs submitted the water allotment letter dated 22nd October, 2008 from GWIL. Air-cooled condenser will be provided to WHRB. The waste water from power plant will be treated in neutralization plant. Treated waste water will be used for water sprinkling during dust suppression and green belt development. Sewage will be disposed of through septic tank & soak pit.

Fly ash (2,820 MTPM), bed ash (600 MTPM) will be used in captive brick manufacturing plant and additionally have a tie up with Cement manufacturing units. Coal char (5,400 MTPM) will be used in existing power plant. Slag (5,124 MTPM) will be sold to cement/brick manufacturing units. Iron ore fines, mill scale, flue dust etc. will be used in Sinter Plant. BF slag will be granulated and provided to cement manufacturers. Used/spent oil will be sold to authorized recyclers.

Out of total 100.62 ha, green belt is earmarked for 8 ha. in existing and 5.47 ha. in proposed expansion. Thus, total 13.47 ha. is proposed for the green belt development. Coke, coal and waste heat from DRI will be used as fuel.....”

7. After setting out the details of the proposed expansion of the project as aforesaid, the decision of the Expert Committee was as under:

“The Expert Committee (Industry) decided that PAs may be communicated the above ‘TORs’ for the preparation of EIA/EMP. As soon as the draft EIA/EMP report is prepared as per the ‘General Structure of EIA’ given in Appendix III and IIIA in the EIA Notification, 2006, the same may be submitted by the PAs to the MOEF for prior Environmental Clearance. PAs informed to the Committee that Environment Clearance has been accorded to M/s Electrotherm India Ltd. for the existing plant vide letter dated 20th February, 2008 with public hearing on 12th June, 2007 and requested for the exemption. The Committee considered the request and exempted from the public hearing as per Section 7(ii) of EIA Notification, 2006 due to no additional land requirement, ground water drawl, utilization of DR and BF gases in WHRB & char in AFBC boiler, fly ash and BF slag to cement manufacturers, etc.”

8. The matter was thereafter considered for grant of Environmental Clearance which came to be granted by Government of India, Ministry of Environment and Forests by communication dated 27.01.2010, relevant portion of which was:-

“The Ministry of Environment and Forests has examined the application. It is noted that proposal is for the expansion of Steel plant at Milestone No.310 of NH No.8A, Village-Samkhiyali, Taluka Bhachau, Kutch, Gujarat by M/s. Electrotherm India Limited. Expansion will be carried out in 21.43 ha within the existing industrial premises of 11.46 ha. No National Park/Wild Life Sanctuary/Reserve Forest is located within 10 km radius of the project site. Total cost of the project is Rs.274.00 crores. Sponge Iron, DI Pipes, Steel Rolling Mill, Induction Furnace are existing after getting ‘No Objection Certificate’ from Gujarat Pollution Control Board (GPCB). ‘Consent to Establish’ is also obtained from GPCB vide consent No. PC/CCA/KUTCH-294/28080, dated 13th September, 2006 and PC/CCA-KUTCH-294(3)13208 dated 30th April, 2008. Environmental Clearance for the existing plant (Pig Iron Plant and Captive Power Plant (30 MW) is accorded vide Ministry’s letter No.J-11011/503/2006-IA-II(I) dated 20th February, 2008. Following are the details of the existing and proposed facilities:

Sr.No.	Products	Production Capacity		
		(MTPM)		
		Existing	Proposed	Total
1	Sponge Iron	6,000	18,000	24,000
2	D.I. Pipes	4,000	12,000	16,000
3	Captive Power	30 MW	15 MW	45 MW
	WHRB	6 MW	15 MW	21 MW
	FBC	24 MW		24 MW
4	Pig Iron	4,500	18,600	23,100
	(Blast			
	Furnace)			
5	Sinter Plant	-	32,400	32,400
6	Steel Rolling	5,833	10,500	16,333
	Mill			
7	MS	5,833	30,000	35,833
	Billets/Bars			
8	Stainless	25,000	--	25,000
	Steel Billets			
9	Alloy Nickel	416	--	416
10	Induction	17Sets/Mo	--	17 sets
	Furnaces	nth		
11	Electric Cycle	83 Sets/	--	83 sets
	and Vehicle	Month		

3.0 Sponge Iron will be produced using DRI method. Iron oxide will be chemically reduce to ‘hot metal’ in blast furnace (BF). Sinter plant will use iron ore fines, mill scales and flue dust. Sinter produced will be used in BF. Pig Iron will be heated in induction furnace (IF) to prepare duct iron pipes. Scrap and sponge iron will be

charged to IF and then poured to ladle refining furnace (LRF) and then molten material will be changed to continuous casting machine (CCM) to produce billets, rods and bars. Billets from steel melt shop (SMS) will be put into reheating furnace to manufacture TMT bars. Waste gases from DRI will be used in WHRB. No AFBC is proposed during expansion since it already exists.

4.0 Electrostatic precipitator (ESP), dust settling chamber (DSC), after burning chamber (ABC), gas cleaning system with bag house, bag filters, multi-cyclones, dust collectors, stack of adequate height, dust suppression and extraction system will be provided to control air emissions. Total water requirement from Gujarat Water Infrastructure Ltd. (GWIL) will be 2,165 m³/day and water is allotted vide letter dated 22nd October, 2008.

No ground water will be utilized. Air-cooled condenser will be provided to WHRB. No waste water will be discharged from sponge iron plant, pig iron plant, sinter plant, WHRB power plant, TMT bar plant, BI pipe and induction/arc furnace. The waste water from power plant will be treated and used for dust suppression and green belt development. Coal char will be used in existing power plant, coal dust in the boiler, iron ore fines, mill scales, flue dust etc. in sinter plant. Fly ash will be used in captive brick manufacturing plant and also provided to cement manufacturing units.

Slag will be sold to cement/brick manufacturing units. Bed ash will be disposed off in secured landfills.

5.0 Public hearing for the existing plant was held on 12th June, 2007 and is exempted for the proposed exemption as per Section-7(ii) of EIA Notification, 2006.”

9. On or about 10.05.2010 Respondent No.1 herein filed Special Civil Application No.5986 of 2010 in the High Court of Gujarat, in public interest, seeking revocation of Environment Clearance granted to the Appellant for expansion of its plant. It was submitted inter alia that as a result of expansion the proposed capacity and activities of the Appellant were to increase substantially and that the Environmental Clearance granted for expansion of plant was not in conformity with EIA Notification of 2006. The Appellant which was Respondent No. 3 in the High Court, in its reply submitted inter alia that the petition was not in public interest and Respondent No.1 was set up by the business rivals of the Appellant and that the Appellant had complied with all the norms and requirements and was rightly granted Environment Clearance for expansion of the plant. The responses filed on behalf of the Ministry of Environment and Forest, Govt. of India and Gujarat Pollution Control Board also submitted that the Environmental Clearance was rightly granted and that the activities of the Appellant were periodically and regularly being monitored to ensure that stipulated Environmental safeguards were complied with.

10. After hearing rival submissions, the High Court by its judgment and order dated 11.5.2012 allowed Special Civil Application No.5986 of 2010 principally on the ground that the Environmental Clearance dated 27.1.2010 was granted without there being public consultation or public hearing which was a mandatory requirement under 2006 Notification. The observations of the High Court

in that behalf were as under:-

“18. The facts to a certain extent have disturbed us for the simple reason that respondent no.3 set-up its unit of steel plant in the year 2005 and started operating the same fullfledge. However, till 2008 they had no Environmental Clearance and it is only for the first time vide order dated 20th February 2008 Environmental Clearance was granted and that too for expansion. Subsequently, once again in 2009, they applied for Environmental Clearance as they proposed to increase the production capacity almost three times the existing capacity, for which also Environmental Clearance was granted but without giving any public hearing or public consultation.

19. Thus, the only question for our consideration is as to whether the Environmental Clearance dated 27.1.2010 can be termed as illegal in the absence of public consultation or public hearing as mandatorily provided by Notifications dated 2006. We agree with learned Counsel Mr. Oza that there is a basic flaw in the Environmental Clearance granted in favour of respondent No.3. It is apparent that when public hearing took place in the year 2007, the same was on the basis of the first application which respondent No.3 had preferred for expansion of the steel plant. Objections were raised by the persons concerned. However, when Environmental Clearance came to be granted vide order dated 27th January 2010 pursuant to the second application dated 8th June 2009 preferred by respondent no.3 for enhancing the production capacity, the requirement of public hearing/public consultation was waived by the authority on the assumption that in the year 2007 public hearing was already undertaken. It is undisputed that in the year 2007 when the public hearing was given, the objections and suggestions were taken into consideration by the authority and Environmental Clearance was accorded in the year 2008 but, thereafter, when the second application was preferred dated 8th June 2009 for enhancing the production capacity by more than double, people were not made aware of this proposal of respondent No.3 and the authority proceeded to accord Environmental Clearance waiving public hearing.” The High Court also placed reliance on the pronouncement of this Court in the case of Lafarge Umiam Mining Private Limited

- T.N. Godavarman Thirumulpad Vs. Union of India and Others[1].

The High Court thus set aside Environmental Clearance dated 27.01.2010 and directed the appellant to stop operations of the entire plant and further directed that the operations could be restarted only after fresh Environmental Clearance was accorded in its favour by the Ministry of Environmental and Forests and Union of India. The decision of the High Court is presently under challenge.

11. In this appeal by Special Leave, this Court issued notice on 15.05.2012 and by further order dated 18.05.2012 stayed the operation of the judgment and order of the High Court. It also directed the Central Pollution Control Board to file status report in respect of plant and compliance of statutory

requirements by the appellant. On 18.7.2012 an affidavit was filed on behalf of CPCB stating that during its visit half of the plant was not in operation and as such actual compliance of the statutory requirements could not be ascertained. It further stated that the industry of the Appellant was non-compliant with pollution standards in one or the other area made certain recommendations.

12. The matter was thereafter taken up on 22.4.2014 when the following order was passed by this Court:-

“The matter has been almost fully heard. Having regard to the submissions of the learned senior counsel and the Notifications of 1994 and 2006, it has become necessary to get the joint inspection done of the petitioner’s project from the Gujarat Pollution Control Board and Central Pollution Control Board (CPCB) and report submitted to this Court whether the petitioners has complied with the recommendations of the Central Pollution Control Board which are specified in para 7 of the affidavit of Mr. R.K. Purohit, Senior Executive Director of the petitioner in response to the affidavit of Central Pollution Control Board dated 18.7.2012.

We, accordingly, direct the Central Pollution Control Board and Gujarat Pollution Control Board to make a joint inspection of the petitioner’s project in the 3rd week of June, 2014 and report about the compliance of the recommendations as set-out in the above affidavit. The report shall be submitted on or before 5.7.2014. We make it clear that if from the report it transpires that the petitioner has not yet complied fully with the recommendations specified in the affidavit noted above, the special leave petition shall have to be dismissed. On the other hand, if the full compliance of the above recommendations is found to have been made, the impugned order of the High Court will be set-aside.....”

13. In the affidavit filed on 07.07.2014 on behalf of CPCB it was stated inter alia that pursuant to the order dated 22.04.2014 passed by this Court, a joint inspection was carried out as directed and that the industry of the Appellant had complied with most of the recommendations, though there were still certain shortcomings.

14. The matter was thereafter taken up for hearing. Appearing in support of the appeal Dr. A.M. Singhvi, learned Senior Advocate submitted that most of the recommendations made in the affidavit dated 18.07.2012 having been complied with, the matter now stood in a narrow compass. Mr. Huzefa Ahmadi, learned Senior Advocate appearing for Respondent No.1 however submitted that the infirmity on account of absence of public hearing/public consultation which is a mandatory requirement under the EIA Notification of 2006, rendered the Environmental Clearance dated 27.01.2010 invalid and illegal.

15. The facts on record are clear that while granting Environmental Clearance on 20.02.2008, public consultation/public hearing was undertaken on 12.06.2007. As on that date the status of the project was that the capacity of Pig Iron Plant was to be 350 TPD, Power Plant to be 24 MW, the total cost of the project was 90.00 crores and the total Water requirement was 650 M³/Day. The High Court was

absolutely right that after expansion the capacity of the plant was to increase three-fold. The tabular chart given in Environmental Clearance dated 27.01.2010 itself shows the tremendous increase in the capacity. Consequently, the pollution load would naturally be of greater order than the one which was contemplated when the earlier public consultation/public hearing was undertaken on 12.08.2007. Further, the water requirement had also risen from 650 M³/Day to 2165 M³/Day. The increase in pollution load and water requirement were certainly matters where public in general and those living in the vicinity in particular had and continue to have a stake.

16. Public consultation/public hearing is one of the important stages while considering the matter for grant of Environmental Clearance. The minutes of the meetings held on 9-11 February, 2009 show that the request of the Appellant for exemption from the requirement of public hearing was accepted by the Committee. The observations of the Committee suggest that there would be no additional land requirement, ground water drawl and certain other features. However the water requirement, which is a community resource, was definitely going to be of greater order in addition to the fact that the expansion of the project would have entailed additional pollution load.

17. It must be stated here that after EIA Notification of 2006 a draft Notification was issued on 09.01.2009 wherein an amendment was suggested in paragraph 7(ii) of EIA Notification dated 14.09.2006 to the effect that in cases of expansion of projects involving enhancement by more than 50% holding of public consultation/public hearing was essential; implying thereby that in cases where expansion was less than 50% public consultation/public hearing could be exempted. Without going into the question whether public consultation/public hearing could be so exempted, it is relevant to note that this idea in the draft Notification was not accepted, after a Committee constituted to advise in the matter had given its report on 30.10.2009 to the contrary. As a result, the final Notification dated 01.12.2009 did not carry or contain the amendment that was suggested by way of draft Notification. Consequently, no exemption on that count could be given when the Environmental Clearance came to be issued on 27.01.2010.

18. In the case of Lafarge (supra) public consultation/public hearing was considered and found to be mandatory requirement of the Environmental Clearance process by this Court. In its conclusions culled out in paragraph 122 (xiv) as regards public consultation/public hearing, it was observed by this Court:-

“(xiv) The public consultation or public hearing as it is commonly known, is a mandatory requirement of the Environment Clearance process and provides an effective forum for any person aggrieved by any aspect of any project to register and seek redressal of his/her grievances.

19. At the same time the observations by this Court while summing up the discussion in paragraph 119 are quite eloquent:-

“.....It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail

policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision- making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint.” In terms of the principles as laid down by this Court in the case of Lafarge (supra), we find that the decision making process in doing away with or in granting exemption from public consultation/public hearing, was not based on correct principles and as such the decision was invalid and improper.

20. At the same time, we cannot lose sight of the fact that in pursuance of Environmental Clearance dated 27.01.2010, the expansion of the project has been undertaken and as reported by CPCB in its affidavit filed on 07.07.2014, most of the recommendations made by CPCB are complied with. In our considered view, the interest of justice would be sub-served if that part of the decision exempting public consultation/public hearing is set aside and the matter is relegated back to the concerned Authorities to effectuate public consultation/public hearing. However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court. If the public consultation/public hearing results in a negative mandate against the expansion of the project, the Authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by Environmental Clearance dated 20.02.2008. If public consultation/public hearing reflects in favour of the expansion of the project, Environmental Clearance dated 27.01.2010 would hold good and be fully operative. In other words, at this length of time when the expansion has already been undertaken, in the peculiar facts of this case and in order to meet ends of justice, we deem it appropriate to change the nature of requirement of public consultation/public hearing from pre- decisional to post-decisional. The public consultation/public hearing shall be organized by the concerned authorities in three months from today.

21. This appeal therefore stands disposed of with the aforesaid modifications. No order as to costs.

.....CJI.

(T. S. Thakur)

(R. Banumathi)

.....J.

.....J

(Uday Umesh Lalit)

New Delhi,
August 02, 2016

[1] 2011 (7) SCC 338