

\$~2.

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 30<sup>th</sup> June, 2020

+ W.P.(C) 3747/2020 & CM APPL.13426/2020

VIKRANT TONGAD

..... Petitioner

Through: Mr. Gopal Shankarnarayanan, Sr.  
Adv. with Ms. Shrishti Agnihotri, Mr. Abhishek  
Jebraj & Mr. Vanshdeep Dalmia, Advs.

versus

UNION OF INDIA (MOEFCC)

..... Respondent

Through: Ms. Maninder Acharya, ASG with  
Mr. Anurag Ahluwalia, CGSC with Mr. Abhigyan  
Siddhant & Mr. Viplav Acharya, Advs.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**JUDGMENT**

: **D. N. PATEL, Chief Justice (Oral)**

Proceedings of the matter have been conducted through video conferencing.

1. This petition has been preferred with the following prayers:

*“a. Issue a Writ in the nature of Mandamus or any other appropriate writ, order or direction to the Respondent to extend the notice period to the public, in the draft EIA notification 2020 until 30 September, 2020 or till such further period till the Covid-19 lockdown/ restrictions subsist;*

*b. Issue a Writ in the nature of Mandamus or any other appropriate writ, order, or direction to the Respondent to make*

*translated copies of the draft notification available across the country in the official vernacular languages mentioned in the Eighth Schedule to the Constitution, and upload the same on all its websites including those of the Environment Ministries of all the States as well as those of the State Pollution Control Boards;*

*c. Issue a Writ in the nature of Mandamus or any other appropriate writ, order or direction to the Respondent to conduct consultations with various stakeholders and concerned persons across the country through its State Pollution Control Boards, as a precondition to considering the draft notification;*

*d. Pass any other directions or orders as deemed fit by this Hon'ble Court."*

2. The Central Government, in exercise of the power conferred by Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986, issued a draft notification dated 23<sup>rd</sup> March, 2020 for imposing certain restrictions and prohibition on the undertaking some projects or expansion or modernisation of such existing projects entailing capacity addition, in any part of India. This draft notification was issued for the information of the public likely to be affected thereby, and inviting any objections or suggestions on the proposal contained in the draft notification in writing for consideration of the Central Government, and notice was given that the said draft notification shall be taken into consideration on or after the expiry of a period of sixty days from the date on which the copies of the gazette containing notification are made available to the public. This draft notification was published on 11<sup>th</sup> April, 2020 in the Gazette of India.

3. For ready reference Section 3(1) and Section 3(2)(v) of the

Environment (Protection) Act, 1986 read as under:

**“3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT.”** (1) *Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.*

xx

xx

xx

*(2)(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;”*

4. The original notification was published on 11<sup>th</sup> April, 2020 under Rule 5(3)(c) of Environment (Protection) Rules, 1986 to be read with Section 3 of Environment Protection Act, 1986. For ready reference Rule 5(3)(a) and Rule 5(3)(c) of the of Environment (Protection) Rules, 1986 read as under:

**“5. Prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas**

.....

*(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations Of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central government may deem necessary from time to time, give notice of its intention to do so.*

xx

xx

xx

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.”  
(emphasis supplied)

5. The time to file objections was granted for sixty days. Since this time limit was to be over on 11<sup>th</sup> June, 2020, another notification was published on 8<sup>th</sup> May, 2020 (at Annexure P-6 of the paper book) extending further the notice period by sixty days. For ready reference the relevant portion of the notification dated 8<sup>th</sup> May, 2020 reads as under:

“AND WHEREAS, the Ministry of Environment, Forest and Climate Change is in receipt of several representations for extension of notice period expressing concern that the draft EIA Notification 2020 was published during the lockdown imposed due to the Corona Virus (COVID-19) pandemic;

AND WHEREAS, the Ministry of Environment, Forest and Climate Change after due consideration, deems it fit to extend the notice period for a further period;

Now, therefore, 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 Environment (Protection) Act, 1986 (29 of 1986) hereby extends the notice period for a further period of sixty days. The draft notification issued vide S.O. 1199(E), dated the 23rd March, 2020 and published on 11<sup>th</sup> April, 2020 in the official gazette shall be taken into consideration for finalization on or after the 30th June, 2020;”  
(emphasis supplied)

6. In view of the aforesaid notification dated 8<sup>th</sup> May, 2020 Annexure P-6, it appears that because of prevailing situation of lockdown due to Covid-19 pandemic the time limit has been extended for a further period of sixty

days, whereas, the last date/cut-off date mentioned therein is 30<sup>th</sup> June, 2020. This is an error apparent on the face of the record.

7. Thus, looking to the earlier notification which was published on 11<sup>th</sup> April, 2020 (Annexure P-5 to the memo of this writ petition), the time limit to file objection was upto 11<sup>th</sup> June, 2020 and the subsequent notification dated 8<sup>th</sup> May, 2020 (Annexure P-6 to the memo of this writ petition) extending the notice period for a further period of sixty days, it appears that the notice period will be over on 11<sup>th</sup> August, 2020 whereas in the notification dated 8<sup>th</sup> May, 2020 it has been mentioned as 30<sup>th</sup> June, 2020. We, therefore, clarify that the time limit to file the objections to the draft notification is up to 11<sup>th</sup> August, 2020.

8. It was contended on behalf of the respondents that the time limit for submitting objections was in fact extended only upto 30<sup>th</sup> June, 2020 as provided in the notification dated 8<sup>th</sup> May, 2020. However, it is evident from a reading of the said notification that the extension for a *“further period of sixty days”* also finds mention therein. There is thus, at the very least, a facial ambiguity in the notification, which in our view must be resolved in favour of the public whose comments are invited thereby. This would also aid the process of effective public consultation, which is built into the statutory scheme, and for which purpose the extension notification dated 8<sup>th</sup> May, 2020 was issued.

9. The second issue canvassed by learned Senior Counsel for the petitioner was regarding the languages in which the draft notification dated 23<sup>rd</sup> March, 2020 (published in the Gazette of India on 11<sup>th</sup> April, 2020) has been made available to the public. It was contended that the draft has been published only in English and Hindi, whereas it is proposed to have effect all over India and to several industries and comments have naturally been elicited from all over the country. The affidavit dated 30<sup>th</sup> June, 2020 filed by the respondents states in this connection that the notifications are published in the Gazette only in Hindi and English, but comments and responses can be made in multiple languages, and have in fact been made in other languages as well, which will also be considered. Learned Senior Counsel for the petitioner has pointed out that the respondent has, in the past, published its draft notification in several other languages also. He has drawn our attention to a notification dated 15<sup>th</sup> September, 2010 issued in connection with the Coastal Regulation Zone in this regard. The said notification dated 15<sup>th</sup> September, 2010 states that the draft notification was published in nine coastal languages in addition to English and Hindi.

10. Having regard to the Notification which prohibits (i) modernization, (ii) expansion and (iii) establishment of several industries as stated in the Notification and also looking to the far reaching consequences of the public consultation process for which the draft notification has been published, we are of the view that it would be in aid of effective dissemination of the proposed notification if arrangements are made for its translation into other languages as well, at least those mentioned in the Eighth Schedule to the

Constitution. Such translation may be undertaken by the Government of India itself, or with the assistance of the respective State Governments, where applicable. Such translations should also be published through the website of the Ministry of Environment, Forest and Climate Change, Government of India as well as on websites of Environment Ministries of all the States as well as those of State Pollution Control Boards, within ten days from today. This would further enable the public to respond to the draft within the period stipulated in this judgment.

11. The writ petition is allowed to the aforesaid extent and disposed of in terms of the directions contained hereinabove.

**CHIEF JUSTICE**

**PRATEEK JALAN, J**

**JUNE 30, 2020**

ns