

Daily Order

Judge Name	Case No/Year	Date of Order	Daily Order
CHIEF JUSTICE AND ASHOK S.KINAGI	WP 8632/2020	05/08/2020	<p>Heard the learned counsel for the petitioner and the learned counsel for the respondent.</p> <p>2. Considering the stand taken by the respondent in the statement of objections and the response of the respondent to the prima facie findings recorded in the orders dated 8th July, 2020 and 23rd July, 2020, this petition needs to be heard finally. Accordingly, we issue Rule Nisi. The learned counsel for the respondent waives service.</p> <p>3. As far as the prayer for interim relief is concerned, a very wide relief has been sought which cannot be granted. For dealing with the prayer for interim relief, it is necessary to refer to certain factual aspects.</p> <p>4. On 14th September, 2006, a notification styled as THE ENVIRONMENT IMPACT ASSESSMENT NOTIFICATION (for short, "EIA Notification") was issued by the Central Government in exercise of the powers conferred under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (for short, "the said Act of 1986"). By the said notification, certain restrictions and prohibitions on undertaking some projects or the expansion and modernization of the existing projects were imposed. By publishing a notification dated 23rd March, 2020 which is impugned in this writ petition, a draft notification styled as the Environment Impact Assessment Notification, 2020 (for short, "Draft EIA 2020 Notification") was published in accordance with the provisions of clause (a) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 (for short, the said Rules"). Objections were called for in writing to the said notification.</p>

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			<p data-bbox="619 240 1976 391">5. It is not in dispute that the time granted for filing the objections to the said notification has been extended till 11th August, 2020. Two days after the impugned EIA Notification dated 23rd March, 2020 was issued, a national level lockdown was announced by the Central Government due to the spread of COVID-19.</p> <p data-bbox="619 532 1976 813">6. The stand taken in the statement of objections is that the Draft EIA 2020 Notification dated 23rd March, 2020 was published on the website of the Ministry of Environment, Forest and Climate Change known as 'PARIVESH' for the information of all the stake holders on 12th March, 2020. This date stated in the statement of objections appears to be a mistake. On 11th April, 2020, the impugned notification both in English and Hindi, was put on the official website of the respondent. The correctness of this statement is disputed by the learned counsel appearing for the petitioner.</p> <p data-bbox="619 954 1976 1398">7. Thus, the Draft EIA 2020 Notification in English and Hindi languages was put on the website of the Central Government on 11th April, 2020 during the period of lockdown. As far as the State of Karnataka is concerned, the lockdown substantially continued till the end of May and from June, 2020, there were some relaxations granted. Even in July, the lockdown was reintroduced for certain period. As noted in the earlier order dated 16th July, 2020, the stand of the respondent is that the State Environment Impact Assessment authorities have been directed to give a wide publicity to the impugned Draft EIA 2020 Notification in the local languages. Till today, nothing is brought on record by the respondent to show that such a publicity in the local language (Kannada) has been given in the State of Karnataka. It is necessary to refer to the earlier orders passed by this Court recording prima facie findings. The relevant part of the order dated 8th July, 2020 reads thus:</p>

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			<p data-bbox="619 196 747 224">“ORDER</p> <p data-bbox="619 280 722 308">XXXXX</p> <p data-bbox="619 365 722 393">XXXXX</p> <p data-bbox="619 449 722 477">XXXXX</p> <p data-bbox="619 699 1976 1019">The grievance of the learned counsel appearing for the petitioner is that though the notification is published during the period of pandemic, wide publicity has not been given to the same. He submits that it is published only in the official gazette of the Government of India and it is available only on the website of the concerned Ministry of Government of India. His submission is that in the past, when such notifications were issued in exercise of powers under sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (for short ‘the said Act’) read with Rule 5 of the Environment (Protection) Rules, 1986 (for short ‘the said Rules’), wide publicity was given even in the vernacular languages in the newspapers, etc.</p> <p data-bbox="619 1157 1976 1271">A perusal of clause (a) of sub-rule (3) Rule 5 of the said Rules shows that there is power vesting in the Central Government to publish the draft notification in such other manner as the Central Government may deem it necessary from time to time.</p> <p data-bbox="619 1409 1976 1523">Prima facie, there is a merit in the contention raised by the learned counsel appearing for the petitioner that during the present period of pandemic, it will be appropriate if the Central Government exercises power under second part of clause (a) of sub-rule (3) of Rule 5 of the</p>

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			<p>said Rules and gives wide publicity to the notification dated 23rd March 2020 so that the citizens will be in a position to submit objections prior to 11th August 2020.”</p> <p>(underline supplied)</p> <p>8. In the order dated 23rd July, 2020, this Court observed thus:</p> <p>“Instead of making a statement accordingly, now a statement of objections filed by the Central Government contending that it is under no obligation to publish the draft notification in official languages of the States. Placing reliance on the provisions of the Official Languages Act, 1963, the stand taken by the Central Government is that publication of the notification only in English and Hindi is valid and it is not necessary to publish it in any other language. This stand has been taken by the Central Government after making a solemn statement which is recorded in the order dated 16th July 2020, that the respondent has given direction to all the State Environment Impact Assessment Authorities to give publicity to the notification dated 23rd March 2020 in all local languages. There is nothing placed on record to show that this direction issued to the State Environment Impact Assessment Authorities has been implemented. The time has been extended to file objections only till 11th August 2020.</p> <p>Clause (a) to (c) of Sub-rule 3 of Rule 5 of Environment (Protection) Rules, 1986, read thus:</p> <p>“5. PROHIBITION AND RESTRICTION ON THE LOCATION OF INDUSTRIES AND THE CARRYING ON PROCESSES AND OPERATIONS IN DIFFERENT AREAS:</p>

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			<p>(1). xxxx</p> <p>(2). xxxx</p> <p>(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.</p> <p>(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area.</p> <p>(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.</p> <p>(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may within three hundred and sixty five days from such day of publication] impose prohibition or restrictions on location of such industries and the carrying</p>

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			<p>on of any process or operation in an area.”</p> <p>Prima facie, we do not agree with the submission that the hands of the respondent are tied by virtue of the provisions of Official Languages Act, 1963 and that they need not ensure publication of the impugned notification in the official languages of the affected States. Ultimate object of the publication as can be seen from Clauses (a) to (c) of Sub-rule 3 of Rule 5 of Rules of 1986 appears to be that those who are likely to be affected should be in a position to file objections. We can understand that if the respondent would have extended the time to file objections, considering the fact that due to prevailing situation, the State Impact Assessment Authorities have not published the translation of the impugned notification in regional languages / official languages of the States.</p> <p>Place the petition on 05th August 2020 for considering the prayer for interim relief.”</p> <p>(underlines supplied)</p> <p>9. The stand taken in the statement of objections is based on the provisions of Article 343 of the Constitution of India and the Official Languages Act, 1963. The stand taken is that in view of the constitutional provisions and the provisions of the Official Languages Act, 1963, it is not the obligation of the Government of India to give publicity to the impugned Draft EIA 2020 Notification in the local languages of the States. In paragraph 7 of the statement of objections, a very peculiar stand has been taken by the respondent-Government of India. The stand is that comments from the public have to be sought and received with reference to the draft notification as published in the Gazette in English and Hindi so as to avoid any ambiguity in its interpretation. Thus, the stand taken is that the comments of the public must be submitted only with reference to what is published in English and Hindi languages. This indicates the approach of the respondent which suggests that according to the respondent, those who do not understand English and Hindi languages cannot file their comments or objections to the</p>

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			<p data-bbox="617 198 1157 228">impugned Draft EIA 2020 Notification.</p> <p data-bbox="617 367 1976 769">10. As observed in the order dated 23rd July, 2020, in view of the express language used by clause (a) of sub-rule (3) of Rule 5 of the said Rules, the notification in the Official Gazette is not the only mode of publication of the draft notification and the Central Government may publish it in such other manner as may be deemed necessary from time to time. The stand taken by the respondent is that there is a direction issued by the respondent to the State authorities to give a wide publicity to the impugned notification in the local languages. However, there is nothing placed on record to show that such a publicity has been given in the local language in the State of Karnataka. Thus, there is every possibility that the Final Notification would be published even before wide publicity is given to the Draft EIA 2020 Notification in the State of Karnataka in the local language.</p> <p data-bbox="617 907 1976 1273">11. All this has to be appreciated in the light of the factual background that the impugned Draft EIA 2020 Notification was issued two or three days prior to the commencement of the national lockdown. In fact, on 22nd March, 2020, the Hon'ble Prime Minister had made an appeal for observing Janatha Curfew. It cannot be disputed that as far as the State of Karnataka is concerned, there may be many citizens who may not be conversant with English and Hindi languages, who are entitled to file their objections. During the period of lockdown on account of the pandemic, there were several constraints on individuals for filing objections to the Draft EIA 2020 Notification. The citizens may be required to consult the experts in the field for filing the objections. Even that was not possible due to the lockdown and pandemic.</p> <p data-bbox="617 1411 1976 1523">12. After having directed the State authorities to give wide publicity in the local language of the States, the respondent cannot proceed to publish the final notification without even verifying whether such a publicity in the local languages has been given.</p>

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			<p data-bbox="619 321 1974 560">13. Prima facie, it appears to us that the right of the citizens of lodging objections to the Draft EIA 2020 Notification has been taken away due to the factors which we have indicated above. We repeatedly asked a question to the learned counsel for the respondent whether he is in a position to make a statement that a reasonable time will be granted to file the objections to the Draft EIA 2020 Notification after a wide publicity is given to the same in the State. He is unable to make a positive statement in this behalf.</p> <p data-bbox="619 698 1974 974">14. Therefore, we grant a limited interim relief. We restrain the respondent-Government of India from publishing the final notification on the basis of the impugned draft EIA Notification till the next date of hearing. We may clarify here that in the meanwhile, it will be open for the respondent to take all permissible steps on the basis of the draft EIA Notification. In the event the respondent is ready to grant a reasonable time for submitting the objections from the date on which wide publicity is given in the State of Karnataka, it can always apply for vacating the interim order.</p> <p data-bbox="619 1112 1974 1185">15. Let the petition be listed on 7th September, 2020 for consideration of the interim relief granted under this order.</p>

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