

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

(ORIGINAL JURISDICTION)

W.P (FR) No. _____ /2020

BETWEEN:

1. Anushka Gupta,

PETITIONER NO.1

PETITIONER NO.2

PETITIONER NO.3

And:

1. Karnataka State Pollution Control Board,

Parsiara Bhavan
49#, Churuch Street, Shanthala Nagar
Bangalore-560001
Represented by its Chairman

RESPONDENT NO. 1

2. Bangalore Development Authority,

Kumara Park West,
T.Chowdaiah Road,
Bengaluru – 560020
Represented by its Chairman

RESPONDENT NO. 2

**MEMORANDUM UNDER ARTICLE 226 OF THE CONSTITUTION OF
INDIA**

ADDRESS FOR SERVICE:

1. The address of the Petitioners and the Respondents for the purpose of the issuance of the Court summons, notices etc., are as stated in the cause title above. Additionally, the Petitioners may also be served through its counsel, M/s. Genesis Law Partners., having its office at No. 307, 3rd Floor, House of Lords, St Marks Road, Bengaluru – 560 001.

CAUSE OF ACTION:

2. The Petitioners are filing the present writ petition invoking the writ jurisdiction of this Hon'ble High Court for protection and enforcement of the constitutional rights of the public at large, challenging the illegal, arbitrary and *malafide* action on the part of the Respondent No. 1, specifically its Order PCB/CNP/07/GEN/19/1938 dated 31.08.2020 (Hereinafter referred to as the "***Impugned Notification***") insofar as it mandates the holding of the mandatory EIA public consultation process by the Respondent No. 2 for the 'Peripheral Ring Road' project through virtual means only on 23.09.2020.

A true copy of Order PCB/CNP/07/GEN/19/1938 dated 31.08.2020 issued by the Respondent is annexed herewith as **Annexure-A** .

3. As the project causes major environmental impacts to multiple rural and urban communities and the biodiversity of the region, holding the public consultation process virtually restricts multiple vulnerable communities, which do not have the technical means to attend the virtual hearing, from effectively raising their concerns about the project, leading to an abject fail of the 'public consultation' process. The Impugned Notification by way of mandating a virtual public consultation hearing ignores the social matrix of the people this notification affects and violates the

constitutional rights of the multiple minority communities affected by the project and the people of the State of Karnataka.

4. The petitioners are aggrieved by the impugned notification in the following manner:
 - a. Access to justice is a fundamental principle of rule of law. The impugned notification, which mandates the use of Zoom mobile application for conducting the public consultation process is bad in law and should be struck down. Public Consultation, which is a facet of the larger overarching principle of access to justice is a legal right intrinsic to Article 14, 19 and 21 of the Constitution of India, and is a right that is vested upon all citizens of India.
 - b. Article 14 of the Constitution of India allows for discrimination between classes of people only if there is a rational nexus between the classification and its objective. The impugned notification discriminates between persons with and without access to the Internet. The purpose of having a public consultation process is to take into consideration the opinions and suggestions of diverse stakeholders, and not allowing the class of persons without access to the Internet in the public consultation process defeats the very purpose this provision seeks to achieve, and hence this classification is violative of Article 14.
 - c. Article 19 (1) (a) of the Constitution of India protects the right to receive information and this includes the right to be aware of the law. The purpose of this right is to enable citizens to "take part in participatory development in industrial life and democracy", as laid down by the Hon'ble Supreme Court in *Reliance Petrochemicals vs Indian Express*, 1988 (4) SCC 592.

This exact right of the right to receive information and the right to be aware of the law is being violated by the Impugned Order. One of the purposes of the public consultation process is to spread awareness about the law, since traditional modes of publishing necessarily require literacy by the subject. By making access to internet a prerequisite, this very demographic of persons with low literacy are being excluded, and their Article 19(1)(a) rights are being violated.

- d. The public participation process, especially for environmental decision making is an inalienable part of the fundamental right to life and personal liberty under Article 21 of the Constitution of India and it is the duty of the State to ensure wide scale participation in this process. In the case of *Research Foundation for Science Technology National Resource Policy v. Union of India (2005) 10 SCC 510*, the Hon'ble Supreme Court held that "the right to information and community participation necessary for protection of environment and human health is an inalienable part of Article 21 and is governed by the accepted environment principles. The Government and the authorities have to motivate the public participation by formulating the necessary programmes." This project causes major environmental impacts to multiple rural and urban communities. Keeping the public consultation process online restricts multiple vulnerable communities to access this process and hence violates Article 21.
- e. Clause 3(1) of EIA Notification, 2006 states that "Public Consultation refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are

ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate". Keeping the public consultation process online goes against this clause of the parent EIA Notification, and hence the impugned notification is bad in law.

Copy of the relevant sections of the EIA 2006 bill are annexed herewith as **Annexure B**.

- f. India is a signatory to The Paris Agreement, 2016, the Rio Declaration and the ESPOO Convention all of which emphasize on the importance of having a public consultation process that is inclusive of all the diverse stakeholders. In, *Maganbhai Patel v. Union of India*, 1969 AIR 783, the Hon'ble Supreme Court has recognized that if a state action restricts the rights of citizens and international instruments augment those rights, then those rights are directly enforceable. Even Article 253 of the Constitution of India promotes the State to strengthen its international commitments. This impugned notification by making the Internet a prerequisite to access the public consultation process, violates India's international obligations.

Copy of the relevant articles of the Paris Agreement are annexed herewith as **Annexure C** Rio Declaration as **Annexure D**, ESPOO Convention as **Annexure E**.

PETITIONERS BACKGROUND:

5. That the petitioners are public spirited Indian Citizens, and law students with a history of environmental activism. The petitioners have previously published a report on the EIA 2020 draft

notification, and have sent countless representations on different social issues to the appropriate authorities. True copies of the report and all the representations can be furnished to this Hon'ble court for perusal if required. The petitioners are law students based off of Bangalore and New Delhi. Prior to filing this writ in this Hon'ble Court, the petitioners sent a representation to the Respondent No. 1 on 9.9.2020 through e-mail. Further, a physical copy was also submitted in the Respondent No. 1's Office in Bangalore, on 11.09.2020 and a receiving stamp on the same was procured. The petitioners further sent reminders on 14.09.2020 and 15.09.2020, yet the respondent did not reply to the representation and the reminders. Pursuant to these reminders not being answered, the only remedy available to the petitioners to seek for directions through this Hon'ble court.

3. That the petitioners have no personal interests, individual gain, private motive or oblique reasons behind filing this PIL. The petitioners have filed this petition with *bona fide* interests solely towards the end of public and national interest. The present petition concerns the violence of discrimination caused by the impugned notification.

BRIEF FACTS:

4. That the facts leading to the filing of this Public Interest Litigation are as follows:
 - a. In a bid to address the growing need for efficient commutation, address traffic congestion and connect the Bangalore-Mysore Infrastructure Corridor (NICE road) with

more access points, the Respondent No. 2 formulated the Peripheral Ring Road project scheme in 2005.

- b. A preliminary notification (CPMG/KA/BG-GPO/13/ WPP-47/2003-05) was issued on 27.09.2005 by Respondent No. 2 under Section 17(1) and (3) of the Bangalore Development Authority Act 1976 to acquire certain land for the execution of the project. The stated purpose of the project was:

- "1) To decongest the traffic in Bangalore City;
- 2) To cater intercity connectivity and intercity traffic;
- 3) To reduce pollution in the city;
- 4) To reduce heavy vehicles traffic i.e., Lorry and Trucks; and
- 5) To decongest the traffic on outer ring road."

- c. Another preliminary notification was issued on 23.09.2005 by Respondent No. 2 which concerned the realignment of the proposed road project.
- d. A final notification under Section 19(1) of the Bangalore Development Act (BDA ACT) was issued on 29.06.2007 by Respondent No. 2 for the acquisition of the proposed land.
- e. The notifications were challenged before this Hon'ble Court in Writ proceedings on the ground that the appellant had no authority to issue the notifications and acquire land for the proposed PRR project. By a judgment dated 22.7.2014, this Hon'ble Court dismissed the writ petition on the ground that the appellant was authorised

under the BDA Act to acquire the land for the project in question. The Writ Appeal against this was dismissed on the ground of default on 9.02.2017.

Copy of final judgment dated 22.7.2014 in WP No. 4550/2008 can be placed on record, if required for perusal by this Hon'ble court.

- f. Respondent No. 2 submitted the project proponent and an application to the SEIAA seeking an EC for the PRR. Primary data was collected between December 2009 and February 2010. The final EIA report was placed before the SEAC and the SEIAA in October 2014. An EC was granted by the SEIAA on 20 November 2014. Another Resettlement Action Plan was also conducted by the Bangalore Development Authority in April 2015 which analysed the social impacts on communities.

Copy of "Rapid Environmental Impact Assessment Studies for PRR" published by Respondent No. 2 dated October 2014 is annexed herewith as **Annexure F**

Copy of "Final Revised Draft Resettlement Action Plan" published by Respondent No. 2 dated April 2015 is annexed herewith as **Annexure G**.

- g. An appeal to the NGT was filed challenging the grant of the EC and the NGT by an interim order dated 15.04.2015 granted an interim stay of the EC. The NGT noted the discrepancy between the submission of the appellant and the existence of a reserved forest through which the proposed road was to pass. The NGT recorded that while the EIA report stated that only 200 trees would be cut for

the proposed project, the report given by the Horticulture and Forest Department indicated that about 16,685 trees would be required to be felled for the proposed project.

- h. By its final order dated 8.2.2019, the NGT stayed the operation of the EC granted by the SEIAA and directed the appellant to conduct a rapid EIA study. It was further also directed that if the project is found to be viable after incorporating abatement measures "the same can be taken up without the delay". The NGT also found out that by 2019 the EC had already been five years old and hence the data was outdated.
- i. On 16.3.2019, Respondent No. 2 filed a plea against the NGT finding before the Hon'ble Supreme Court. The Hon'ble Supreme Court ordered in Civil Appeal No 2566 of 2019, upheld the order of the National Green Tribunal and Respondent No. 2 to seek fresh Environmental Impact Assessment (EIA) certification for the Rs 11,950-crore project. The Hon'ble Court also directed Respondent No. 2 to hire a sector-specific accredited EIA consultant and ensure that no damage would be caused to the petroleum pipelines over which the project would come up. The Court found that Respondent No. 2 had understated the number of trees that would be cut. While Respondent No. 2 said that only 519 trees would be felled for the project, the Deputy Conservator of Forests pegged the number at 16,785 and the Court termed this development an "abject failure".
- j. After re-analysing and publishing the Revised Environmental Impact Assessment for the 8-lane

Peripheral Ring Road and publishing the findings in July 2020, under court orders it was discovered that the PRR project will result in loss of 34,000 trees and impact five lakes, the TG Halli catchment area, Jarakabande Reserve Forest. It will also destroy 9,304 trees in TG Halli catchment area and impact 5 lakes and see diversion of 10.12 hectares of Jarakabande Reserve Forest. The removal of such a huge tree cover and clearance of vegetation will cause disturbance in the microclimate, habitat loss and disturbance of vegetation and sensitive plant communities. It can cause physical disturbance and increase in release of CO₂.

Copy of "Draft Environmental Impact Assessment Report for Development of Eight Lane Peripheral Ring Road – Phase –I." published by Respondent No. 2 dated June 2020 is annexed herewith as **Annexure H**.

- k. In compliance with the Order of the Hon'ble Supreme Court and provisions of the EIA 2006 Notification under the Environment Protection Act, 1986, public hearing was also to be held by the Respondent. For this, comments and objections of interested bona fide residents, eco groups and others located at the project site and likely to be affected by the project were invited to file their suggestions within 30 days of the notification, which closed on August 13. Subsequently the public hearing was to be held on August 18 in Nityotsava Kalyana Mantapa in Singanayakanahalli, Doddaballapura Road near Avalihalli village. The project now having been stalled for more than fifteen years and Respondent No. 2's

insistence in holding a public hearing in the midst of a global pandemic reveals the baselessness surrounding urgency of this meeting.

Copy of newspaper article "BDA Goes ahead with Public Consultation for PRR" published on 18.8.2020 in The Hindu is annexed herewith as **Annexure J**.

- I. However, this move to hold the public hearing during the Covid crisis received massive public outcry and various environmental groups sought postponement of this hearing arguing that it was a violation of central and state government orders. Subsequently this hearing was cancelled when the Minister of forest and ecology expressed that it was the government's duty to give the public a fair chance to express their opinion.

Copy of Newspaper Article "Virtual Public Hearing for PRR on September 23rd BDA mum on project details" published in the Hindu on 02.09.2020 is annexed herewith as **Annexure K**.

- m. Then, Respondent No. 1 through the impugned notification (PCB/CNP/07/GEN/19/1938) published on 31.08.2020 notified that Respondent No. 2 had proposed to continue the environmental public hearing by conducting a webinar in respect of the Development of Eight Lane Peripheral Ring Road, Phase – 1 connecting Tumakuru Road to Hosur Road in Bengaluru Urban District, Karnataka. The hearing is to be held on 23.09.2020 at 11:00 AM through the Zoom Platform. The notification also specified that interested public and

residents could also make oral/written/E-mail suggestions to the KSPCB before 15.09.2020.

- n. Subsequent to this the Petitioners sent a detailed and comprehensive representation to Respondent No. 1 highlighting the major concerns with this notification and through an E-mail on 9.09.2020.

A Copy of Representation letter sent via email dated 9/09/2020 is annexed herewith as **Annexure L**.

Some of the issues highlighted by the Petitioners were:

- i. A survey conducted in 2015 estimated that only 15% of the Indian population owned a smartphone. A recent report from IMAI suggests that 71% of mobile data consumers in India belong to the urban areas. Other surveys also suggest that 72% of rural internet users were male while only 28% of rural users were female. A copy of Survey Report "Digital in India" conducted by Nielsen and Internet and Mobile Association of India in 2019 is annexed herewith as **Annexure M**.
- ii. Data released by the Telecom Department of India in 2019 and Statista shows that only 27.57 per 100 of the rural population of India (comprising the people who usually suffer the most) have access to the internet. Even in urban areas only 38% internet users were female and 62 percent were male. About 68% of the affected households are not aware of the construction of this project and only 20.56 % of the persons surveyed reported owning computer sets.

A copy of "The Indian Telecom Services Performance Indicators July – September, 2019" Published by TRAI is annexed herewith as **Annexure N.**

- iii. A Survey conducted by NSSO and published by MSPSI provided that in rural Karnataka only 2% of the population had computer access and about 8.3% had internet connection.

Copy of relevant extracts of Survey Report "Key Indicators of Household Social Consumption on Education in India" conducted by NSSO and published by MSPI in June 2018 is annexed herewith as **Annexure P.**

- o. A reminder was sent to the respondent via email asking for a reply to the representation on 14.09.2020.

A Copy of reminder email sent to the respondent dated 14.09.2020 is annexed herewith as **Annexure Q.**

- p. Another reminder was sent to the respondent via email on 15.09.2020.

A Copy of second reminder email sent to the respondent dated 15.09.2020 is annexed herewith as **Annexure R.**

- q. On, 14.09.2020 an Office Memorandum issued by the Central Government clarified that owing to the order (40-3/2020-DM-I(A)) dated 29.08.2020, congregations with a ceiling of 100 persons will be permitted with effect from 21.09.2020 and hence these include public hearings in EIA processes for various projects across the country.

A Copy of Office Memorandum issued by the Ministry of Environment Forest and Climate Change dated 14.09.2020 is annexed herewith as **Annexure S**.

- r. The decision taken by Respondent No. 1 is also inconsistent with the general practices being adopted by other State Pollution Control Boards.
- s. The Gujarat State Pollution Control Board published on 26.03.2020 a notice for a public hearing (for the second largest oil refinery the Nayara Energy Limited) to be held in the coming six weeks. After requests for withdrawal, the Board postponed the hearing to 18.04.2020. Till date, the public hearing has been postponed four times and the authorities have complied with the citizens' requests and concerns.

Copy of Article titled "Public Hearings during COVID, the Gujrat Way" in Newslick published on 27.07.2020 2007 is annexed herewith as **Annexure T**.

- t. The Maharashtra Pollution Control Board has been conducting various online hearings and through the minutes of the meeting of a couple of such meetings we can understand that there was very minimal attendance, due to the fact of low internet penetration in rural areas)..

Copy of the Minutes of the Meeting of Public Hearing Panel in respect of proposed 96 nos. of Sand Mining Projects in the Amravati District proposed by District Mining Officer dated 10.06.2020 at 12 Noon via ZOOM App is herewith annexed as **Annexure V**.

- u. The Central Government issued an advisory on 12.04.2020 which clearly specified that the zoom application should not be used owing to "safety reasons". Copy of advisory issued by Cyber Coordination Centre under the Union Ministry of Human Affairs (MHA) dated 16.04.2020 2020 is annexed herewith as **Annexure W**.

GROUND

- 5. The present writ petition is hence preferred on the following grounds:

EIA 2006 Violation

- 6. Clause 3(1) of EIA Notification of 2006 (Annexed herewith as Appendix -A) states that

"Public Consultation refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate".

Section 7(i) of the Notification mandates a public consultation process to be held before granting or rejecting the environmental clearance of projects falling under Categories A and Category B1 of the notification. Appendix IV of the notification highlights the process for conducting a public hearing and mandates that the public hearing be conducted in such manner that it ensures maximum public participation by those who would be affected by and/ or have stake in the environmental impact of a concerned project.

7. The Hon'ble Supreme court in *Talaulicar & Sons P.Ltd vs Union Of India (2016) 8 SCC 299* stated that conducting public hearings are not only one of the essential features to be followed before granting environmental clearances, but also conducting such public hearings must be effective and if the court finds such a measure to be faulty the authority would be asked to redo the entire procedure of public hearing. Therefore, since an online measure would be barring a certain group of people from being able to voice their concerns, such a measure should not be followed because the purpose of such a hearing becomes vitiated.
8. The entire purpose of conducting a public consultation process is to ensure that the concerns of the stakeholders in the project are fully heard and are given their due consideration. The impugned notification issued Respondent No. 1 differs from the intent of its parent notification, as it limits the ability of several affected persons and communities to be able to express themselves in a free and fair manner through the public consultation process. Furthermore, the prescribed method for public consultation in the notification i.e. a virtual hearing through Zoom application, is illegal because there are no clauses in the 2006 Notification that specify the usage of this process for holding a legitimate public hearing. Lastly, the Respondent No. 2's use of the Zoom application ought to be condemned due to the Central Government advisory on 12.04.2020 which clearly specified that the said application should not be used owing to "safety reasons".

9. The office mandate issued by the Ministry of Environment, Forest and Climate Change Impact Assessment Division on 14.9.2020 allows _____ for social/academic/sports/entertainment/cultural/religious/political functions and other congregations from 21.9.2020 with a ceiling of 100 persons. The Karnataka state pollution control board can hold a physical public consultation process, which would ensure wider participation. Since the optimal method of conducting public consultations is now available, the KPSCB should not opt for the less desirable alternative.

Article 14 Violation

10. Access to Justice is a fundamental principle of rule of law, and in its absence, people cannot hold institutions accountable. The Indian legal framework through its constitutional promises promotes this principle and in the present case during local governance practices, the concerns of the people who would be most affected ought to be accounted for. The present notification which has called for a virtual meeting is a clear violation of our constitutional principles of access of justice. Non-consultation or limited consultation provisions as specified in the new draft EIA 2020 notification has also been severely criticized and this impugned notification clearly shows that the State Boards are promoting a similar standard of minimum public participation.

11. Article 14 guarantees equality before the law and equal protection of law to every person in India. In essence, what this means is that the state can not discriminate between persons through state action, otherwise such state action becomes void. The constitution acknowledges existing inequalities in society,

and hence providing equal treatment to unequal persons can lead to injustice. Article 14 allows for the state to discriminate amongst people, only when the reason for the discrimination is to attain equality. There has to be a rational nexus between the objective of the law and the requirement of the classification.

a) A survey conducted in 2015 estimated that only 15% of the Indian population owned a smartphone. A recent report from IMAI suggests that 71% of mobile data consumers in India belong to the urban areas.

Other surveys also suggest that 72% of rural internet users were male while only 28% of rural users were female.

b) Data released by the Telecom Department of India in 2019 shows that only 27.57 per 100 of the rural population of India (comprising the people who usually suffer the most) have access to the internet. Even in urban areas only 38% internet users were female and 62 percent were male. About 68% of the affected households are not aware of the construction of this project and only 20.56 % of the persons surveyed reported owning computer sets.

c) A Survey conducted by NSSO and published by MPSI provided that in rural Karnataka only 2% of the population had computer access and about 8.3% had internet connection.

d) Furthermore, as found in a report by Nielsen and Mobile Association of India, in Karnataka in overall about 42% of the population has access to an internet connection.

e) Lastly a study by the Telecom Regulatory Authority of India shows that out of the 71 million internet subscribers in Karnataka, the rural population comprises merely 37.14% of the users with 27 million subscribers.

f) Studies also show that there is a class divide in access to smartphones and internet where most of the consumers were from the middle class and the upper class.

12. This impugned notification creates two separate classes of persons, i.e. persons with access to the internet, and persons who do not have access to the internet, and only allows the class of persons who do have access to the internet to be a part of the public consultation process. As can be seen in the studies quoted above, it is the vulnerable classes of persons who have faced historical injustices are the same classes of people with least internet penetration. This discrimination goes against the pith and substance of article 14, as it discriminates in order to protect existing social inequalities and hierarchies, rather than abolishing them.

13. These persons would be deprived of participating in the process because of the reason of their illiteracy and non-accessibility to the internet and the computers and the same is violative of the Article 14 of the Constitution of India. Disregarding the social inequalities in India and making access to the internet a prerequisite to participate in the public consultation process hinders the rights of several minority communities from accessing justice. This perpetuates an almost invisible form of violence on socially and economically backward communities and furthers us from the goal of achieving social equality in India.

Article 19 Violation

14. In *Reliance Petrochemicals Ltd. v. Indian Express Newspapers* 1989 AIR 190, the Hon'ble Supreme Court held that:

"Article 19 (1) (a) protects the right to receive information and this includes the right to be aware of the law. The purpose of this right is to enable citizens to "take part in participatory development in industrial life and democracy."

15. The purpose of public consultation is to inform people about the nature of a proposed law, its effects and involve the stakeholders in trying to understand the possible harms and come to probable solutions. It also in essence, decentralizes power and empowers the people. The impugned notification, by making the internet a necessity, gatekeeps information and disallows it to escape and reach the socially disadvantaged.

Article 21 Violation

16. The Hon'ble Supreme court in *Alaknanda Hydro Power Co.Ltd vs Anuj Joshi (2014) 1 SCC 769* has stated that the purpose of public hearings is:

"to know the concerns of the affected people and to incorporate their concerns appropriately into the Environment Management Plan (EMP) for the project and it is after incorporation, revising/modifying the EMP, the final EMP would be submitted to the MoEF for granting environmental clearance to the project."

The court has stated that proper public consultation is necessary for the project to be in tandem with the law.

17. The Hon'ble Supreme court laid down the standard of substantive compliance in the *Raza Buland Sugar Co. Ltd vs Municipal Board 1965 AIR 895* wherein it said that there has to be a nexus between the intent of the law, its implementation, and if it causes injustice to the people it governs. While the impugned notification assumes that the persons affected can attend the public consultation process online, this assumption is not based in reality because it doesn't take into consideration the problems faced by multiple disadvantaged communities, and hence, violates the principle of substantive compliance.
18. The Hon'ble Supreme Court in *N.D. Jayal And Anr vs Union of India (2004) 9 SCC 362* increased the scope of Article 21 stated that human dignity encompasses within its ambit the protection and preservation of environment and ecological balance free from pollution of air and water. Further Article 21 with respect to the Environment Protection Act strived to achieve the objective of -" provide(ing) for the protection and improvement of environment" hence this can only be achieved by ensuring the strict compliance of its directions. In the present case, since the participation of people would be limited and proper voice cannot be given about the problems suffered by them, the act of the State Board is in violation of the right guaranteed under Article 21.
19. It was stated in *Samarth Trust And Another vs Union Of India And Others Writ Petition (Civil) No 9317 of 2009*, by the Hon'ble High Court of Delhi that a public hearing is a form of participatory justice that gives a voice to the voiceless and a place and occasion for them to express their views with regard to a project.

Such a public hearing gives an opportunity to the people to raise issues pertaining to the social impacts of a proposed project. Since the public participation would be affected because the procedure is on an online forum such a measure would not be effective.

20. In the case of *Research Foundation for Science Technology National Resource Policy v. Union of India (2005) 10 SCC 510*, the Hon'ble Supreme court held that:

"the right to information and community participation necessary for protection of environment and human health is an inalienable part of Article 21 and is governed by the accepted environment principles. The Government and the authorities have to motivate the public participation by formulating the necessary programmes."

21. The notification by the State Board mandates to have the public hearing on an online forum it would demotivate a certain group of people who do not have internet access or the technical know-how of attending such forums. Therefore, an online measure bars the public from voicing their concerns.

22. The Hon'ble Supreme court of India in judgement of *Hanuman Laxman Aroskar v. Union Of India (2019) 15 SCC 401* has highlighted the intrinsic character of public consultation and described it as:

"a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. Public consultation is a process which is designed to hear the voices of those communities which would be affected by the activity."

23. Hence, keeping in mind the judicial precedent, it is clear that public participation with regards to environmental decision-making is an inalienable and an intrinsic principle. The impugned notification significantly violates this principle and amounts to gross injustice, causing multiple directly affected communities to not enjoy their article 21 rights guaranteed by the constitution.

International Obligations

24. The Paris Agreement, 2016 (annexed herewith as Appendix B) to which India is a signatory, states in Article 12 that:

"Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognising the importance of these steps with respect to enhancing actions under this Agreement."

25. Even under the Principle 10 of the Rio Declaration it states that at the national level each individual shall have appropriate access to information concerning the environment that is held by public authorities and states shall facilitate and encourage public awareness and participation by making information widely available. Article 2 (6) of the *ESPOO Convention* (annexed herewith as Appendix D) places heavy emphasis on the need for public participation of the likely affected population(s). This obligation under the Convention requires the State to allow for the participation of populations directly affected by a project, and also populations of neighboring states. Since the State Board has prescribed for an online mode of public hearing, the public participation process would be limited to people with access to

the Internet and the remaining population would have no proper forum to voice their concerns.

26. Importantly, it has been held in the case of *Vishakha and others v. State of Rajasthan* Air 1997 SC 3011 by the Hon'ble Supreme Court that:

"even if a treaty, convention, resolution is not ratified by Indian State the courts are at liberty to incorporate these conventions".

27. In *Maganbhai Patel v. Union of India* 1970 (3) SCC 400, the Hon'ble Supreme Court of India have recognized that if a state action restricts the rights of citizens and international instruments augment those rights, then those rights are directly enforceable. Added to this, even Article 253 of the Constitution of India promotes the State to strengthen its international commitments Both these conventions emphasize on the importance of public participation while taking decisions on developmental projects which might adversely affect their communities, and India being a signatory to these conventions, has an International obligation to ensure access to information. The public consultation process falls within the ambit of these international obligations, and by excluding a class of people who do not have access to the internet, India violates these international obligations.

Statistical Analysis

28. The Rapid EIA study conducted for this specific project lists sixty-three villages, settlements and habitations as areas which would be directly impacted by this project. A detailed socio-economic

survey was conducted as a part of this study within 2 kms either side of the proposed site to assess the baseline status. Information on the socio-economic profile of this area was collected from Taluk Offices, District Statistics and Primary Health Centers. A test check survey was also carried out by conducting interviews with local people and village heads. The following statistical analysis uses the same REIA:

a) The population density of the district as per the 2001 census was 2985 per Sq km. out of the total population of 65.37 lakhs, 34.27 lakhs of the residents were males and 31.10 lakhs were females. As per the 2001 census, 12% of the population lived in rural areas. Out of the total population, 14.32% of the population were of the scheduled tribe and scheduled caste communities.

b) Furthermore around 12.67% of households were women headed households. Considering the usual economic and social disadvantages that befall these minority households, it is understandable the kind of negotiating power they might possess in public decision-making forums.

c) By excluding these communities from taking part in the public consultation process, we are aiding in their further oppression. These social handicaps may be produced in even starker terms when we analyse the literacy levels of the communities affected.

d) Even though the literacy levels are high at 83% in general, rural women in the affected sites have a literacy of about 60% which is much lower. The education levels also

are very moderate where in out of the total population, a majority of 27.89% studied up-to high school,12.82% till graduation,11.04 % till senior secondary,10.49% till primary and 8.74% till middle school. The higher education level is represented by 3.76% of the population who are Postgraduates, and people with technical qualifications are only at 2.13%

e) Keeping in mind that the impugned notification also invites suggestions and concerns in the form of letters and E-mails, it is clear that a considerable number of affected people would be deprived of this tool which would amount to injustice.

f) Interestingly, in a recent survey conducted to find out the awareness of the local population regarding this project, 67.08% of the people responded negatively. This shows there is a dire need of including the voices of the affected people, and the public consultation process can act as a great tool to raise awareness.

g) Also, this project requires the cutting down of around 33,838 trees, most of which are located in crucial catchment areas. This and many other similar environmental impacts caused by this project can be a source of concern for various communities residing nearby, and these concerns ought to be heard. Nearly 1,810 acres of farmers' land was notified for acquisition from nearly 4,000 landowners in 67 villages for the construction of the 65.5-km PRR road, envisaged to decongest the City's traffic by connecting Tumakuru Road

to Hosur Road. This further shows the plight of various farmers who would lose their lands and their livelihood. The impugned notification severely hinders the rights of several persons to access the public consultation process.

h) Key stakeholders in the PRR project include numerous farmers who would lose their land if the project was carried out. These farmers have been carrying out various protests across the affected area demanding higher compensation for their land loss because the amount to be given was first allocated at 8,100 crore but it was soon reduced to 5,700 crore.

These farmers are demanding compensation as per the market price and not the guidance value. These concerns are essential as it has been more than fifteen years that these farmers' have had their lands been taken over without compensation and the present notification with the online public hearing process predominantly makes it a lot harder for these poor farmers to raise these concerns comprehensively.

29. A major cause of distress in the present notification is the timing of it. The Board's insistence on conducting the consultation process in the middle of a global pandemic is a sign of alarm and is also inconsistent with the general practices of other parallel authorities.

30. A significant comparison can be drawn with the Gujarat State Pollution Control Board. It published on 26.03.2020 a notice for a public hearing (for the second largest oil refinery the Nayara Energy Limited) to be held in the coming six weeks. After requests

for withdrawal, the Board postponed the hearing on 18.04.2020. Till date, the public hearing has been postponed four times and the authorities have complied with the citizens' requests and concerns and also kept in mind the realities of the COVID crisis and the same expectations are to be maintained from the present Board.

31. Multiple other online public hearings have taken place already and the various discrepancies that we have pointed out can be seen in reality. For instance, the Maharashtra Pollution Control Board has been conducting various online hearings and through the minutes of the meeting of a couple of such meetings we can understand that there was very minimal attendance (naturally due to the fact of low internet penetration in rural areas).

There was no representation from communities who will suffer the worst impacts of the projects entailed. Furthermore, the relevant authorities understood their absence in the meeting to mean that these communities did not have any grievances or concerns to raise - this is the farthest from reality.

32. The lack of social capital in several minority communities due to historic systemic exploitation is a fact that still echoes within the diverse populace of India. This impugned notification issued by Respondent No. 1 ignores this very same fact, and in a sense perpetrates and continues this systemic violence. Laws cannot be understood outside of their social context, and hence predicting the experiences of the people who are to be affected by the law should be an integral part of law making. This allows for the jurisprudential morality of the law to be accountable to the people it governs. This notification, by making access to the internet a requirement, secludes several minority communities

from entering the law-making process and keeps them side-lined as the "outsiders", pushing us further from achieving social equality in India.

GROUND IN SUPPORT OF INTERIM RELIEF

33. That the petitioners file this Writ Petition under Article 226 of the Constitution of India in public interest, seeking a prohibition restraining the public hearing scheduled for 23.9.2020 and an order/writ of mandamus or direction be passed and, in its place, a physical public consultation session which incorporates participation of all the diverse stakeholders involved in the present issue be done whenever safe and appropriate.
34. That the petitioners have no personal interests, individual gain, private motive or oblique reasons behind filing this PIL. The petitioners have filed this petition with bona fide interests solely towards the end of public and national interest. The present petition concerns the violence of discrimination caused by the impugned notification.
35. That Respondent No. 1 and 2 are the sole Respondents required to comply with the present prayers and are clearly "state" for the purposes of Article 12 of the constitution, and the petition is maintainable against them.
36. That the Petitioners have not filed any other petition before this Hon'ble Court or any other High Court for the reliefs prayed. This is the only petition which the Petitioners have preferred.
37. The Petitioners submit that this Hon'ble Court has the requisite jurisdiction to entertain the present Writ Petition and adjudicate upon the issues arising there from.

38. The Petitioners have paid the requisite court fees.

39. The Petitioners further reserves their rights to amend this Petition as and when required and to produce additional documents which may come into the possession/knowledge of the Petitioners herein.

PRAYER

In light of the arguments advanced, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- i. ISSUE AN APPROPRIATE WRIT quashing the respondent order dated 31.08.2020 in PCB/CNP/07/GEN/19/1938 (**Annexure – A**) in so far it directs for a mandatory public hearing on 23.09.2020 through zoom application.
- ii. ISSUE AN APPROPRIATE WRIT in the nature of a mandamus directing the respondent(s) to conduct a physical public consultation hearing which incorporates participation of all the diverse stakeholders involved in the present issue be done whenever safe and appropriate in terms of **Annexure - .**
- iii. ISSUE AN APPROPRIATE WRIT in the nature of a mandamus directing the respondent(s) to conduct a physical public consultation hearing at a later date in addition to a virtual hearing which incorporates participation of all the diverse stakeholders involved in the present issue be done whenever safe and appropriate.
- iv. ISSUE AN APPROPRIATE WRIT in the nature of a mandamus directing the respondent(s) to enable infrastructural support for the

affected persons to access the virtual public consultation before conducting the online consultation.

INTERIM PRAYER

Pending disposal of this Writ Petition, the Petitioners pray that this Hon'ble Court may be pleased to direct the Respondent(s) from not conducting any proceedings in accordance with order dated 31.08.2020 in PCB/CNP/07/GEN/19/1938 (**Annexure – A**).

Place: Bengaluru

Advocate for Petitioners

Date:

Sushal Tiwari

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