

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.36179 OF 2013

G. Sundarrajan Petitioner

Versus

Union of India & Ors.
Respondents

....

WITH

I.A. NO.3

IN

C.A. NO.4440 OF 2013**J U D G M E N T****K.S. Radhakrishnan, J.**

1. This Court, while disposing of the case titled **G. Sundarrajan vs. Union of India** reported in (2013) 6 SCC 620, gave 15 directions for due compliance by AERB, NPCIL, DAE, MoEF, TNPCB, State of Tamil Nadu, etc. Complaining that those directions had not been complied with, the Petitioner herein filed Writ Petition No.19286 of

2013 before the Madras High Court praying for a declaration that the clearance granted by AERB for 'First Approach to Criticality' (FAC) of Unit 1 of Kudankulam Nuclear Power Project (KK NPP) on July 11, 2013 be declared as null and void. Writ Petition was heard along with few other writ petitions like WP No.15829 of 2013 and Writ Petition No.20161 of 2013 and the same were disposed of by a common judgment dated 29.7.2013, against which the Petitioner in Writ Petition No.19285 of 2013 has come up with this Special Leave Petition. The Petitioner has also moved I.A. No.3 of 2013 in Civil Appeal No.4440 of 2013 for a direction to the respondents not to commission the Kudankulam Nuclear Plant till each of the 15 directions given by this Court in the aforementioned judgment has been complied with and till they are properly verified by an independent expert committee appointed by this Court.

2. When SLP (C) No.36179 of 2013 came up for hearing, we passed an order on 17.2.2014 directing the respondents to file their response with regard to steps they

have taken to give effect to the fifteen directions given by this Court. In compliance, the Respondents have filed their affidavits and status report.

3. We heard Mr. Prashant Bhushan, learned senior counsel for the Petitioner, Mr. Mohan Parasaran, learned Solicitor General of India, Shri Rakesh Dwivedi, learned senior counsel appearing for the State of Tamil Nadu, Shri Subramonium Prasad, AAG and other learned counsel appearing for the contesting respondents.

4. AERB in its affidavit dated 24.3.2014 explained the various steps they have taken so as to comply with the various directions issued by this Court. With regard to the concern expressed about the possibility of quality issues with equipment from specific source, it was also pointed out that additional re-verification was carried out before FAC. While doing so, it was stated that the quality aspects of the safety related equipment in KK NPP from that source had not been compromised. AERB Observers Team re-verified the implementation of QA requirements from initial stage of manufacturing up to final receipt of the

component/ equipment at Kudankulam. It was pointed out, no non-conformance of significance to safety was observed. With regard to direction no.5, it was pointed out that SNF can be stored for a minimum period of 7 years within plant in Spent Fuel Pool (SFP) located in Reactor Building. Design of the same, it was pointed out, has been reviewed from the point of adequacy of design, surveillance requirements, monitoring provisions to ensure safe storage considering plant and public safety. For storage beyond 7 years, Away From Reactor (AFR) facility is planned by NPCIL. NPCIL has submitted the roadmap for design, construction and completion of AFR facility specifying that the AFR facility would be operational by May, 2018 after obtaining clearance from AERB. With regard to direction no.7, it was pointed out that DGR is to be set up based on national policy and regulatory review would be carried out as and when design for the same is evolved. In the meantime, as per the current regulatory practices, AERB would ensure safe storage of SNF in the spent fuel pool or AFR at Site and ensure that the transportation is in accordance with the AERB

requirements. Detailed response has been made to rest of the directions in the affidavit filed by AERB.

5. NPCIL has also filed an affidavit along with Annexure A furnishing the status report with regard to the directions issued by this Court in the above-mentioned judgment. NPCIL with regard to direction no.1, pointed out that the quality of equipment supplied by M/s Zio-Pololsk such as steam generator, cation and anion filters, mechanical filters, moisture separators and re-heaters etc. are fully accessible for any inspection, and none of Zio-Pololsk supplied equipment to KKNPP are subject to neutron irradiation. Further, it was submitted that to fulfil the directions in para no.230 of the judgment, report has been filed. With regard to direction no.7, it was stated that as the present storage capacity of each Spent Nuclear Fuel Bay (SNF Bay) is adequate to accommodate discharged fuel for a period of seven years starting from its first refuelling operation, and hence as such the AFR facilities would only be required eight years after the First Criticality of the KKNPP Unit-1. Further, it is also stated that a Task

Force for finalisation of design, design basis report to construct Away From Reactor (AFR) facility for KKNPP Unit 1 & 2 has been constituted by NPCIL vide office Order dated May 15, 2013 and that the Task Force has prepared a roadmap for the design and construction of AFR. It was further pointed out that NPCIL is committed to complete the AFR facility within five years. Reply has also been given to the rest of the directions as well.

6. Detailed affidavit has been filed on behalf of the Tamil Nadu Pollution Control Board stating the steps they have taken to comply with the directions. Following the directions of this Court, it was pointed out, the officials of the Board inspected the plant on 18.5.2013 along with the members of the Department of the Atomic Energy, NPCIL, MoEF, etc. to verify the status of compliance of conditions stipulated by the Tamil Nadu Pollution Control Board in the consent order granted under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. It was noticed that the Unit has complied with the conditions and the consent order

issued to the Unit. Further, it was pointed out that the Unit has installed temperature measuring device both at the sea water intake and marine out fall facility, and the difference between ambient temperature of the sea and the water disposed into sea by the Unit is not exceeding 7°C as per the conditions stipulated by the Tamil Nadu Pollution Control Board.

7. The District Collector, Tirunelveli District, submitted a status report with specific reference to direction nos.11 to 15. With regard to direction no.11, it was pointed out that the first off-site emergency exercise was conducted on 9.6.2012 at Unit at Nakkanery village with the support of the concerned Ministries of the Government of India, Officials of the State Government and the local authorities, etc., and that the next exercise will be conducted as per the guidelines shortly after the Parliamentary Elections are over. With regard to direction no.12, it was pointed out that under the Neighbourhood Development Programme (NDP) being implemented by the Unit, a sum of Rs.200 crores has been earmarked for various projects. It was

pointed out that the projects have been identified and that an Apex Committee has been constituted to oversee implementation of the NDP. Further, under NDP, a sum of Rs.45 crores has been sanctioned towards first instalment of the total amount of Rs.200 crores and from the released funds, work for the installation of Solar Street Light (200 Nos.) and Solar Motor Pumps (32 Nos.) has been completed. Further, it was also stated that the upgradation of Koodankulam Primary Health Centre to Government Hospital and improvements to Chettikulam Sub Centre, construction of new PHC are nearing completion. The construction of new PHC at Ovari is completed and the improvement and widening of roads (29 roads) around the Unit has been completed. Further, it was also pointed out that around the Kudankulam surrounding area, the Government issued an order to construct 5000 houses at the estimate of Rs.150 crores during the year 2013-2014. With regard to direction no.13, it was pointed out that training had been conducted in August, 2011, for the State Government officials of various departments including revenue, police, medical,

fire, etc. and that a refresher course was organised in June, 2012. Further, it was stated, schedule for refresher course is being planned in consultation with District Administration. With regard to direction no.14 relating to the consent of withdrawal of criminal cases filed against the agitators, it was pointed out that out of 349 cases, 248 cases had already been withdrawn since in those cases no violence was noticed. However, with regard to other cases i.e. cases of lay siege through sea (6 cases), cases of violence against private individuals (40 cases) and cases of violence against Government officials (55 cases), it was stated, it is not possible to withdraw the cases as the violations and crimes committed are very serious in nature. The question whether the rest of the cases be proceeded with or not is for the trial court to decide on which we express no opinion.

8. After perusing the various affidavits filed by the Respondents, we notice that the directions given by this Court are being properly addressed by the Respondents and there is no laxity on the part of the Respondents in not

carrying out various directions of this Court. For full implementation of directions, evidently, it may take some more time and we are sure that the Respondents would make earnest efforts to give effect to all the directions of this Court in letter and spirit.

9. Shri Prashant Bhushan, learned senior counsel appearing for the Petitioner, submitted that a team headed by a former Chairman of the AERB be constituted to examine as to whether these directions are being properly implemented or not. We find it unnecessary to appoint any Committee at this stage since the status report and the affidavits indicate that the Respondents are taking necessary steps so as to give effect to various directions, even though some of the directions are yet to be fulfilled, which naturally would take some more time. At the moment, we find no reason to give any further directions.

10. The Special Leave Petition is disposed of as above, so also the I.A.

.....J.

(K.S. Radhakrishnan)

.....J.
(Vikramajit Sen)

New Delhi,
May 08, 2014.

SUPREME COURT OF INDIA



JUDGMENT