

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**WRIT PETITION (PIL) NO. 54 of 2014**

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SUO MOTU....Applicant(s)

Versus

STATE OF GUJARAT & 18....Opponent(s)

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Appearance:

HCLS COMMITTEE, ADVOCATE for the Applicant(s) No. 1

SUO MOTU for the Applicant(s) No. 1

MRS KRISHNA G RAWAL, ADVOCATE for the Applicant(s) No. 1

MR PK JANI, ADDL.AG with MR DM DEVNANI, AGP for Opponent(s) No. 1

MR ABHISHEK MEHTA for M/S TRIVEDI & GUPTA, ADVOCATE for the
Opponent(s) No. 9

VIRAL K SHAH, ADVOCATE for the Opponent(s) No. 18

MR DEVANG VYAS, ADVOCATE for the Opponent(s) No. 18

MR MD PANDYA, ADVOCATE for the Opponent(s) No. 2 - 6

MR SUBRAMANIAM IYER, ADVOCATE for the Opponent(s) No. 19

MR.VARUN K.PATEL, ADVOCATE for the Opponent(s) No. 12

MR MIHIR JOSHI, SR. ADVOCATE with MS AMRITA M THAKORE,
ADVOCATE for the Opponent(s) No. 7

MR KS NANAVATI with MR RAHEEL PATEL for NANAVATI ASSOCIATES,
ADVOCATE for the Opponent(s) No. 8 , 10 - 11

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CORAM: **HONOURABLE THE ACTING CHIEF JUSTICE MR.
JAYANT PATEL**

and

HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 16/12/2015

ORAL ORDER

**(PER : HONOURABLE THE ACTING CHIEF JUSTICE
MR. JAYANT PATEL)**

1. We have heard Mrs Krishna Raval to assist the Court, Mr.

Prakash Jani, learned Additional Advocate General with Mr. D.M. Devnani, learned AGP for the State and its authorities, Mr. Mihir Joshi, learned Sr. Advocate with Ms. Amrita Thakore for respondent no. 7, Mr. Abhishek Mehta, learned advocate appearing for M/s. Trivedi & Gupta for respondent no.9, Mr. K.S. Nanavati with Mr. Raheel S. Patel for Nanavati Associates, learned advocate for respondent nos. 8,10 and 11, Mr. Varun Patel, learned advocate for respondent no. 12 and Mr. Subramaniam Iyer, learned advocate for respondent no.19.

2. Pursuant to the direction issued by the Apex Court in Writ Petition (Civil) No. 79 of 2005 dated 31st January, 2014, the High Court has initiated the present *suo motu* proceedings in the larger interest of the workers working in the Coal Fire Thermal Power Plants (hereinafter to be referred to as “power plant”). As per the observations made by the Apex Court, the Committee of NIOH had made 9 suggestions which, for ready reference are reproduced as under:

“1. Comprehensive medical checkup of all workers in all coal fired thermal power stations by doctors appointed in consultation with the trade unions. First medical check up to be completed within six months. Then to be done on yearly basis.

2. Free and comprehensive medical treatment to be provided to all workers found to be suffering from an occupational disease, ailment or accident, until cured or until death.

3. Services of the workmen not to be terminated during illness and to be treated as if on duty.

4. Compensation to be paid to workmen suffering from any occupational disease, ailment or accident in

accordance with the provisions of the Workmen's Compensation Act, 1923.

5. Modern protective equipment to be provided to workmen as recommended by an expert body in consultation with the trade unions.

6. Strict control measures to be immediately adopted for the control of dust, heat, noise, vibration and radiation to be recommended by the National Institute of Occupational Health (NIOH) Ahmadabad, Gujarat.

7. All employees to abide by the Code of Practice on Occupational Safety and Health Audit as developed by the Bureau of Indian Standards.

8. Safe methods be followed for the handling, collection and disposal of hazardous waste to be recommended by NIOH. 9. Appointment of a Committee of experts by NIOH including therein Trade Union representatives and Health and Safety NGO's to look into the issue of Health and Safety of workers and make recommendations."

It was reported before the Apex Court that out of the aforesaid 9 suggestions of the Committee of the NIOH, suggestion nos. 1 to 7 are already accepted by the Central Government. Hence, in any case, implementation thereof by the respective power plants would be required. In addition thereto, the Apex Court had taken note of suggestion nos. 8 and 9 and found that the same also need to be emphasized and followed.

3. The aforesaid suggestions are made broadly by the expert body for ensuring adequate and effective health delivery system for evaluation of occupational health status of the workers and for effective medical treatment to be meted out to the workers who have suffered from any occupational disease. The Apex Court, in the above-referred order, at paragraph-17 did emphasize consideration of the aforesaid three aspects by the High Court and thereafter, if any directions are required to be

issued, has observed that the High Court may consider the said aspects for issuing suitable directions, of course, after hearing the affected parties.

4. The learned counsel appearing for both the sides submitted that in all, there are 11 power plants in the State which may have to meet with the aforesaid aspects and may have to ensure compliance for taking care of the aforesaid three parameters as observed by the Apex Court.
5. Affidavits have been filed by the State authorities, including on behalf of the representative of the concerned thermal power plant, but the affidavit filed on behalf of respondent no. 19 shows that there are 15 workmen suffering from occupational diseases in Gujarat Electricity Board Thermal Power Station at Gandhinagar and there are other 15 workmen suffering from occupational diseases at Gujarat Electricity Board Thermal Power Station at Sikka (Jamnagar) and such workmen are suffering from Asbestosis, NIHL (Noise Induced Hearing Loss) and Silicosis. We may not refer to the names of those persons, but the details are given in the Annexures-2 and 3 of the said affidavit which includes males and females including of young age of 24 to 55 years.
6. It was submitted by Mr. Joshi, learned Sr. Advocate appearing for respondent no.7 that when compliance is reported of the requisite statutory provisions by thermal power plants, this Court may not consider the matter for constitution of a

Committee unless this Court finds that in particular power plant, deficiencies are there or that there is no compliance resulting into occupational disease to the workmen or otherwise.

7. It is true that this Court may examine the aspect of deficiency, if any and thereafter may issue further direction, but if the affidavit of the concerned authority is considered, it speaks of compliance as against the aforesaid 30 workers found in two power plants suffering from occupational diseases. Therefore, the picture cannot be said to be as that of full compliance nor such stand put forward can be accepted. Further, before this Court considers the aspect of deficiency and issuance of further directions in this regard to particular power plant or to all the power plants generally, the appropriate material should come before this Court through the expert body and such can be gathered if any committee of experts is appointed to visit all 11 power plants including health of the workers concerned and then only the matter can be considered for further directions.
8. It is hardly required to be stated that when the Apex Court has directed for *suo motu* consideration of the matter in PIL jurisdiction for ensuring better health atmosphere of the workmen to avoid health hazards, especially for occupational diseases, even otherwise also, help of the experts would be required by this Court. In any case, in view of the details submitted, it is not possible to foreclose the inquiry or further

examination of the status of the workers of the power plants as sought to be canvassed.

9. We may record that so far as the State Government and its authorities are concerned, the learned Additional Advocate General has not opposed to the suggestion of constitution of the Committee for examination of thermal power plants, but he submitted that the committee may be manned by the government officials which this Court may find appropriate and the presence of a judicial officer may not be required. Whereas Mr. Iyer, learned counsel appearing for respondent no. 19 submitted that let there be some judicial officer in the Committee which may instill confidence in the report. Considering the facts and circumstances of the matter, we find that when 11 thermal power plants are to be examined, it may not be possible for the Court to spare the services of judicial officer in this regard, but there can be involvement of any staff from the administration of the court of Principal District Judge concerned in the Committee which may enable the Court to not only get the proper details but would also instill the confidence in the functioning of the expert body which may not be well versed with the procedural aspect of preparation of the report, though may be experts in their respective fields.
10. We may also record that it has been brought to our notice that High Court of Bombay as well as the High Court of Jharkhand, after the matters were relegated by the Apex Court

in the above-referred decision, have constituted Committee and the matters are under consideration before the respective High Courts.

11. In view of the above, the following order:-

(i) There shall be constitution of a Committee of the following members.

(a) Principle Secretary, Health Department of the State Government as Chairman to be assisted by a doctor who is expert in the occupational diseases.

(b) One officer who may be nominated by the Secretary, Labour & Employment Department, not below the rank of Joint Secretary/Director/Commissioner.

(c) One officer who may be nominated by the Secretary, Industries and Mines Department, not below the rank of Joint Secretary/Director/Commissioner.

(d) One officer who may be nominated by the Secretary, Energy and Petrochemicals Department, not below the rank of Joint Secretary/Director/Commissioner.

(e) One officer not below the rank of Registrar from the Court of Principal District Judge of the

respective district where thermal power plant is/are located.

It would be open to the Principal District Judge to nominate any other officer from administrative branch in the event the officer of the rank of Registrar is unavailable or his services are required for any other work which may be indispensable.

(ii) In the meeting of the Committee, if to be held at Gandhinagar, the presence of the officer from the administrative branch from the concerned Court of Principal District Judge would not be required, but at the time when the visit is made for inspection by the Committee, intimation shall be given well in advance to the concerned Principal District Judge for nominating the officer from the administrative branch of the District Court.

(iii) The Chairman shall convene the meeting within two weeks from today and inspection shall be made of all the 11 thermal power plants as early as possible and attempt shall be made to complete the inspection within three months from today.

(iv) The Committee, while making inspection shall keep in mind the aforesaid 9 suggestions essentially with the purpose to ensure adequate and effective health delivery system at the place, occupational health status of the

workers and the effective medical treatment available to the workers, especially for the workers suffering from occupational diseases or those who are prone to occupational diseases.

(v) The Committee shall prepare separate report for each power plant.

(vi) The Committee shall be at the liberty to take help of the district level officers at the respective places where thermal power plant is located for assistance and for examination of patients, the Committee shall also be at the liberty to take help of the medical students.

(vii) Suffice it to observe that the Committee shall be at the liberty to work out its own modalities for implementing the order keeping in mind that ultimately, the responsibility of report is that of the Committee and therefore, under their direct supervision the inspection may be undertaken.

(viii) The expenses for accommodation and lodging of the concerned officers will be met by the concerned thermal power plant and the expenses for their transportation shall be borne by the respective department.

(ix) At the time when the Committee members or its delegates or persons appointed by the Committee are to visit the respective thermal power plant, the

representative of the respective trade union and in the absence of such representative of trade union, NGO working in the area of the concerned thermal power plant shall be permitted to remain present.

12. Let the matter be listed for hearing on 6th April, 2016.
Liberty to apply in case of difficulty.

(JAYANT PATEL, ACJ.)

(VIPUL M. PANCHOLI, J.)

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