

ITEM NO.102

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 7734/1997
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 02-12-1996
IN WP NO. 2456/1996 PASSED BY THE HIGH COURT OF JUDICATURE AT
BOMBAY)

CENTER OF INDIAN TRADE UNION

PETITIONER(S)

VERSUS

STATE OF MAHARASHTRA

RESPONDENT(S)

Date : 14-02-2019 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MR. JUSTICE SANJIV KHANNA

Dr. Rajeev Dhawan, Sr. Adv. (A/C)

For parties:

Mr. Prashant Bhusha, AOR
Mr. T. Sudhaker, Adv.
Mr./Ms. Cheryl D'souza, Adv.
Mr./Ms. Omanakuttan K.K., Adv.

Mr. Kamini Jaiswal, AOR [N/P]

Mr. R. Balasubramanium, Adv.
Mr. Durga Dutt, Adv.
Mr. G.S. Makker, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR
Mr. Anoop Kandari, Adv.

UPON hearing the counsel the Court made the following
O R D E R

By order dated 2nd May, 1997, this Court identified the questions arising to be as follows:

(1) Validity of the project and the contract known as Dabhol Power Project; and

(2) the accountability of the State of Maharashtra (respondent No.2) in this matter, particularly, on account of the inconsistent stand taken by it from time to time.

While by the aforesaid order dated 2nd May, 1997 leave to agitate the first question i.e. validity of the project and the contract known as Dabhol Power Project was refused to the petitioners who had approached the Court in the representative capacity, leave was granted to agitate the second question i.e. accountability of the State of Maharashtra.

It appears that while the Special Leave Petition was pending the State of Maharashtra had appointed a Committee headed by one Dr. Mahdavi Godbole, former Home Secretary (known as Godbole Committee) to go into the matter.

The Godbole Committee submitted its report to the State of Maharashtra on 10th April, 2001 indicating serious

illegalities/infirmities in the matter of award of the contract and processing of approvals, which were *prima facie* against public interest. Failure of governance, it was observed, was broad and across different governments and at both administrative and political levels. However, there was difference of opinion amongst members of the Godbole Committee, whether it should recommend appointment of a judicial commission of inquiry under the Commission of Inquiry Act.

On 7th November, 2001, Shri Justice S.P. Kurdukar, a former Judge, was appointed for through investigation into the aspects of culpability of various public servants.

However, before much progress could be made by Justice Kurdukar Committee, on account of suit filed by the Union of India before this Court (Original Suit No.2 of 2003 - Union of India vs. State of Maharashtra & Anr.) further proceedings of Justice Kurdukar commission of inquiry was stopped by this Court. Eventually, the suit was dismissed in the year 2014. This is evident from the order of this Court dated 18th February, 2015 wherein it is recorded that the learned counsel for the State of Maharashtra after informing the Court about the dismissal of the suit had prayed for time to take instructions as to

whether Justice Kurdukar Commission of Inquiry would be in a position to resume the proceedings.

Nothing much appears to have been happened thereafter until the Court passed another order dated 7th March, 2018 which is in the following terms:

“The latest information available is of the year 2015.

It appears from the record and it has been informed to us by the learned ASG that the Union of India is no longer interested in the Commission (headed by Justice Kurdukar) to continue.

We would like to know the stand of the State of Maharashtra in this regard namely, whether they would like the Commission of Enquiry to be appointed or the Godbole Committee to continue and submit a report as mentioned by the Godbole Committee or the Justice Kurdukar commission to continue or they would like the case to be argued on merits.

Learned counsel for the State of Maharashtra should also take instructions about the progress, if any, in generating power by Dabhol Power Company (now known as Ratnagiri Gas and Power Pvt. Ltd.) for the last 12 months.”

It appears that, in between, the State of Maharashtra has filed an affidavit stating that in view of the long efflux of time and change of circumstances, details of which need not be specifically noticed, the case should be closed as infructuous.

No specific instructions with regard to the recommencement of the inquiry by Justice Kurdukar Commission of Inquiry or any other Commission of Inquiry has been indicated.

Having considered the matter we are of the view that judicial decision as to inquire into the second question i.e. accountability of the State of Maharashtra in respect of which leave was granted by this Court by order dated 2nd May, 1997 is of the Court and instructions sought to be obtained from the State of Maharashtra was only to offer assistance to the Court in arriving at the right conclusion.

As no such instructions have been conveyed to the Court and, on the contrary, a stand of the State of Maharashtra is that the matter should be closed as infructuous, we are unable to agree with the view of the State of Maharashtra.

We fix hearing of the case on 13th March, 2019 as the first item on the list.

In the meantime, it will always be open for the State of Maharashtra to inform the Court of all relevant facts including public servants who may have retired in the

meantime. They shall also examine whether persons conversant with the matter (including members of the Godbole Committee) are available.

We make it clear that the hearing of the case would essentially be confined to a scrutiny of the report of the Godbole Committee and other connected materials to arrive at a conclusion as to whether the second question i.e. accountability of the State of Maharashtra indicated by the Court by its order dated 2nd May, 1997 should be proceeded with and pursued.

We request Dr. Rajeev Dhavan, learned Senior Counsel to continue to appear as Amicus Curiae in the case and make his arguments on the next date fixed i.e. 13th March, 2019 as first item on the list.

[VINOD LAKHINA]
AR-cum-PS

[ANAND PRAKASH]
BRANCH OFFICER