

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 04.05.2012

% **Judgment delivered on: 17.05.2012**

+ **W.P.(C) 2651/2012**

UNION OF INDIA Petitioner
Through: Ms. Indira Jaising, ASG with
Mr.Rohit Sharma, Advocate

versus

G KRISHNAN Respondent
Through:

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner, Union of India assails the order dated 09.04.2012 passed by the Central Information Commission (CIC) in Appeal No.CIC/SG/A/2012/000374, whereby the second appeal preferred by the respondent, Sh. G. Krishnan has been allowed, and a direction has been issued to the petitioner to provide an attested copy of the summary of the Western Ghats Ecology Expert Panel (WGEEP) Report and the report on the Athirappilly Hydro Electric Project, Kerala

to the respondent before 05.05.2012. It has further been directed that the WGEEP report be placed on the website of the Ministry of Environment and Forest (MOEF) before 10.05.2012. A further direction has been issued to the (MOEF) to publish all reports of commissions, special committees or panels within 30 days of receiving the same, unless it is felt that any part of such report is exempted under the provisions of Section 8(1) and Section 9 of the Right to Information (RTI) Act. Further directions have been issued in this regard.

2. The respondent sought from the PIO of the petitioner the summary of the report submitted to the MOEF by the WGEEP under the chairmanship of Prof. Madhav Gadgil and their report on the Athirappilly HEP Kerala. The PIO of the MOEF replied to the said query by observing that:

“The Ministry of Environment and Forests is still in the process of examining the report of the Western Ghats Ecology Expert Panel in consultation with the six State Governments of the Western Ghats region. As such the report is not final, still a draft under consideration of the Ministry and thus not complete or ready for disclosure under RTI.

You may repeat your application at a later date after completion of the process.”

3. Dissatisfied with the aforesaid, the respondent preferred a first appeal, which was also rejected on the ground that the disclosure

of the said report would prejudicially affect the “*strategic, scientific or economic interests of the State*”. Consequently, the petitioner raised the defence available under Section 8(1)(a) of the RTI Act to deny the supply of the information sought by the respondent.

4. As aforesaid, the CIC has allowed the appeal preferred by the respondent.

5. The submission of learned ASG Ms. Indira Jaising, who appears for the petitioner, is that so as to take an informed decision while acting under Section 3(2)(v) of the Environment Protection Act, 1986, which empowers the Central Government to take measures with respect to “*restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards*”, the MOEF constituted an expert panel on 04.03.2010 called the WGEEP under the chairmanship of Prof. Madhav Gadgil. This expert panel had 13 members and one chairman, namely Prof. Madhav Gadgil.

6. It is argued that this expert panel was constituted in recognition of the fact that the western ghats is one of the 34 global biodiversity hotspots, and that it is considered environmentally sensitive and ecologically significant. The function to be performed by the panel included assessment of current status of ecology of the

western ghats as well as to demarcate the areas with recommendation for the same being notified as ecologically sensitive areas under the Environment Protection Act, 1986.

7. The learned ASG submits that the WGEEP report, inter alia, contains recommendations regarding demarcation of the ecologically sensitive areas in the western ghats, broad sectoral guidelines for regulation of activity therein and establishment of western ghats ecology authority under the Environment Protection Act, 1986 for the entire western ghats region.

8. It is also argued that the western ghats have complex inter-state character as they are spread across an approximate area of 1,29,000 sq. kms. of the six western ghat States, namely, Tamil Nadu, Kerala, Karnataka, Goa, Maharashtra and Gujarat. Therefore, the recommendations of WGEEP would influence many sectoral activities, such as agricultural land use, mining industry, tourism, water resources, power, roads and railways. The learned ASG submits that the said report itself records that the same has been prepared on the basis of deficient and incomplete data. She submits that declaring the Western Ghats as an ecologically sensitive zone would have far reaching implications on all on-going as well as proposed industrial activities in different States.

9. It is argued that the said report is still under consideration of the concerned States and any hasty decision on making the report public without adequate consultative process would lead to misuse of the report, and the same may become a stumbling block in the process of development of the western ghats regions.

10. She submits that before the recommendations of the WGEEP panel are accepted by the Central Government, the views of different States that are likely to be affected are required to be considered. If, at this stage, the WGEEP panel report is made public, even before obtaining and considering the views of the affected States, there would be a spate of applications seeking notification of certain areas as ecologically sensitive, based on the recommendations contained in the WGEEP report.

11. The learned ASG submits that the petitioner is not averse to the disclosure of the WGEEP report. However, the same would be released after the process of examination of the said report, in consultation with the affected State Governments of the western ghats region, is completed, and a final decision with regard to acceptance or rejection, in whole or in part or with modification/ conditions/ qualification is taken. This process is not final, and consequently the report cannot be disclosed in the scientific or economic interests of the

State.

12. The learned ASG points out that a host of information in relation to the minutes of the meeting/report of the Madhav Gadgil committee/panel; 42 commissioned papers; 7 brainstorming sessions; 1 expert consultative meeting; 8 consultations with Govt. Agencies; 40 consultations with civil society groups; 14 field visits have already been made public by placing the same on the website – www.westernghatsindia.org. Consequently, the materials which have gone into the preparation of the report of the WGEEP have been made public.

13. It is also argued that under section 4(1)(c) of the RTI Act, every public authority is obliged to “*publish all relevant facts while formulating important policies or announcing decisions which affects the public*”. It is argued that in compliance with section 4(1)(c), the aforesaid information which contains the relevant facts and which would be taken into account while formulating a policy in respect of the ecology of the western ghats has been made public and the decision, as and when taken, would also be made public.

14. A perusal of the impugned order shows that the petitioner did not deny that Prof. Madhav Gadgil had already submitted the WGEEP report. The CIC noticed that since the report has already been

submitted by the panel to MOEF, it cannot be called a “Draft” report. The CIC also observes that there is no exemption from disclosure of a report which has not been accepted by a public authority.

15. The submission raised by the learned ASG before this Court with regard to the scientific or economic interests of the State being affected in case the WGEEP report is disclosed has been considered by the learned CIC in the impugned order, *inter alia*, in the following manner:

“... It must be remembered that the object and purpose of governance in a democracy is to fulfill the will of the people. The PIO has claimed that the policy is being formulated and hence the report cannot be disclosed. This Bench would like to remember Justice Mathew’s clarion call in State of Uttar Pradesh v. Raj Narain (1975) 4 SCC 428 - “In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security”.

With the advent of the RTI Act, citizens have access to a variety of information held by the government and its instrumentalities. It includes information impacting the environment such as impact assessment reports, clearances, permissions/licenses provided by the concerned ministries, etc. This has enabled citizens to knowledgeably understand the environmental issues affecting our country. Citizens and civil society, who are actively pursuing the

objective of protecting the biodiversity of ecologically sensitive regions, flora, fauna, and endangered species, now have access to information which allows them to obtain a true picture of our ecosystem. The RTI Act has proved to be a crucial tool for creating awareness among citizens and making them cognizant of the realities.

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Implementation of proposals for demarcation of eco-sensitive zones, whether before or after finalisation of the WGEEP report, is an executive decision. Mere apprehension of proposals being put forth by citizens and civil society who are furthering the cause of environment protection cannot be said to prejudicially affect the scientific and economic interests of the country. Disclosing a report or information does not mean that the government has to follow it. It may perhaps have to explain the reasons to public for disagreeing with a report based on logic and coherent reasons. This cannot be considered as prejudicially affecting the scientific and economic interests of the State.

....

The RTI Act recognises the above mandate and in Section 4 contains a statutory direction to all public authorities "to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information". More specifically, Section 4(1)(c) of the RTI Act mandates that all public authorities shall- "publish all relevant facts while formulating important policies or announcing the decisions which affect public". It follows from the above that citizens have a right to know about the WGEEP report, which has been prepared with public money, and has wide ramifications on the environment. Disclosure of the WGEEP report would enable citizens to debate in an informed manner and provide useful feedback to the government, which may be taken into account before finalizing the same. It is claimed by the PIO that the policy is being formulated and hence the report cannot be disclosed. The law requires

suo moto disclosure by the public authority 'while' formulating important policies and not 'after' formulating them. Obviously, the thinking was that our democracy is improved and deepened by public participation in the process of decision-making, and not when a policy is finalised and then merely announced in the name of the people.

The disclosure of the WGEEP report would enable citizens to voice their opinions with the information made available in the said report. Such opinions will be based on the credible information provided by an expert panel constituted by the government. This would facilitate an informed discussion between citizens based on a report prepared with their/public money. MOEF's unwillingness to be transparent is likely to give citizens an impression that most decisions are taken in furtherance of corruption resulting in a serious trust deficit. This hampers the health of our democracy and the correct method to alter this perception is to become transparent. Such a move would only bring greater trust in the government and its functionaries, and hurt only the corrupt.

The PIO has not been able to give any reason how disclosure would affect the scientific interests of the State. The PIOs claim for exemption is solely based on Section 8 (1) (a) of the RTI Act. The Commission has examined this claim and does not find any merit in his contention that disclosure would impact the economic interests of the Nation. The Commission therefore rejects the PIOs contention that the information sought by the appellant is exempt under Section 8 (1) (a) of the RTI Act”.

16. Having considered the submissions of the learned ASG and perused the record including the impugned order, I am of the view that there is no merit in this petition, and I am inclined to agree with the reasoning adopted by the learned CIC for allowing the respondent's appeal and directing disclosure of the WGEEP report prepared by Prof.

Madhav Gadgil committee and panel.

17. It is not the petitioners contention before me that the said WGEEP report is not the final document prepared by the panel headed by Prof. Madhav Gadgil in relation to the western ghats ecology and Athirappilly HEP Kerala. So far as the said panel is concerned, they have tendered their report to the MOEF. Now, it is for the MOEF, in consultation with the affected States, to act on the said report. It is for the MOEF and the affected States to either accept/reject, wholly or partially, or with conditions/qualifications/modifications the said report, by taking into account the interests of all stakeholders, and by taking into account the relevant laws, including those applicable in relation to the protection of environment and ecology.

18. If there are any shortcomings or deficiencies in the said report, inter alia, for the reason that the same is based on incomplete or deficient data, or for any other reason, the said factor would go into the decision making process of the MOEF and the concerned States. But it cannot be said that the said report is not final. What is not final is the governmental policy decision on the aspects to which the WGEEP report relates. The said report is one of the ingredients, which the MOEF and the concerned States would take into consideration while formulating their policy in relation to the western ghats ecology.

19. The consultative process and the involvement of the civil rights groups and all those who are concerned, and who may be affected by the policy that may eventually be made, does not stop after the making of the said report by the WGEEP. In fact, after the making of the said report, the said consultative and participatory process, ideally speaking, should become even more interactive and intense.

20. The endeavour of the petitioner appears to be to withhold the WGEEP report, so as to curb participation of the civil society and the interested environmental groups as also the common man, who is likely to be affected by the policy as eventually framed, in the debate that should take place before the policy is formulated. Before the formation of the policy, all the stakeholders should be able to deal with the report and consider whether to support or oppose the findings and recommendations made therein, and the policy should be eventually formulated after due consideration of all points of view.

21. Obviously, the MOEF and the concerned States would also have their opinion and points of view, which they should put across in the process of any such debate, which may take place either publically or in judicial proceedings. There is no reason for the petitioner to entertain the apprehension that the disclosure of the WGEEP report, at

this stage, would impede the decision making process, and also would adversely affect the scientific or economic interests of the States. The broad based participative process of debate would, in fact, help the MOEF and the concerned States in arriving at a policy decision, which is in the larger interest and for public good.

22. The submission of the learned ASG founded upon section 4(1)(c) has no merit for the reason that “all relevant facts” which go into the formulation of important policies would not only include the reports and minutes of commissioned papers, brainstorming sessions, expert consultative meetings, field visits etc., but would also include the report prepared by the expert panel on the basis of such raw material. Therefore, it cannot be said that the petitioner, by placing on its website some of the materials which have gone into the preparation of the WGEEP report, has entirely complied with the requirements of section 4(1)(c) of the Act.

23. The scientific, strategic and economic interests of the State cannot be at cross purposes with the requirement to protect the environment in accordance with the Environment Protection Act, which is a legislation framed to protect the larger public interest and for promotion of public good. Policies framed with the sole object of advancing the scientific and economic interests of the State, but in

breach of the State's obligations under the Environment Protection Act, and other such like legislations, such as the Water (Prevention and Control of Pollution) Act, Air (Prevention and Control of Pollution) Act etc. would be vulnerable to challenge and may eventually not serve the purpose for which such a policy is framed. Therefore, while formulating its policies, the State is obliged to take into account all the relevant laws and the statutory obligations which the State is obliged to fulfill, lest the policy of the State which becomes one sided and imbalanced. A policy evolved in the largest public interest and public good can certainly not be said to be against the strategic, scientific or economic interest of the State.

24. For the aforesaid reasons, I find no merit in this petition and no reason to interfere with the impugned order passed by the learned CIC. Accordingly, the present petition is dismissed.

**(VIPIN SANGHI)
JUDGE**

MAY 17, 2012
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