

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No. 9317 of 2009**

Judgment reserved on: March 23, 2010

% Judgment delivered on: May 28, 2010

1. Samarth Trust
a Registered Trust working for public good as
a Non Governmental Organization (NGO)
having its Central Office at H-136, Shiv Durga Vihar
Lakkarpur, Faridabad – 121009
through its General Secretary
Shri Manish Manjul.

2. Shri Dutta Kinkar Joshi
An environmentally aware public spirited citizen
Son of Shri Laxman Chandra Joshi
Resident of House No.1, Keshav Kutir
Shivaji Nagar, Post Pashulok
Rishikesh, Uttrakhand. ... Petitioners

Through Mr.Sunil Gupta, Sr. Advocate with
Mr.Jatinder Sethi, Mr.Sanjay Abbot,
and Mr.Tanmaya Agarwal, Advs.
Mr.Sanjay Parikh, Amicus Curiae.

Versus

1. Union of India
Ministry of Environment and Forests
Paryavaran Bhawan, C.G.O. Complex
Lodhi Road
New Delhi – 110 003
through its Secretary.

2. State of Uttarakhand
Civil Secretariat
Dehradun
Through the Principal Secretary.
3. Uttarakhand Environment Protection and
Pollution Control Board
6, Vasant Vihar Phase Two
Dehradun
Through its Member Secretary.
4. State Industrial Development Authority
State of Uttarakhand, Dehradun
Through its Secretary.
5. Haridwar Development Authority, Haridwar
Through its Vice Chairman.
6. District Magistrate
District Haridwar.
7. Central Vigilance Commission
Satarkta Bhavan, G.P.O. Complex
Block A, I.N.A.
New Delhi.
Through its Secretary.
8. M/s Aqua Infra Projects Ltd.
Having its Registered Office at
5th Floor, The Mile Stone
Gandhi Nagar Crossing
Bapu Nagar, Tonk Road
Jaipur – 302 015.
Through the Chairman.
9. Asbestos Cement Products Manufacturers' Association
501, Laxmi Bhavan
72, Nehru Place
New Delhi – 110 019.
Through the Chairman. ... Respondents

Through Mr.Ankur Chhibber, Adv. for R-1
Mr.Vivek Vishnoi with Mr.Mukesh
Verma, Advs. for R-3
Mr.Dushyant Dave, Sr. Advocate with
Mr.Ramesh Singh & Mr.Pankaj Jain &
Mr.Amit, Advs. for R-8
Ms.Rashmi Virmani with Mr.Ashish
Kothari, Advs. for R-9

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

MADAN B. LOKUR, J.

The questions for our consideration are culled out from two orders passed by this Court on 14th September, 2009 and on 27th January, 2010. The two questions are:

- a. What is the nature, scope and methodology of a public hearing held in accordance with the notification dated 14th September, 2006 issued by the Ministry of Environment and Forests (for short MOEF). It naturally follows from this question whether the public hearing conducted in the present case conformed to the nature, scope and methodology as postulated.

Our answer to the consequential question is in the affirmative.

- b. Whether the Petitioner (Samarth) has filed this writ petition as a bona fide public interest litigant.

In view of our above conclusion, we do not propose to answer this question.

2. The two orders dated 14th September, 2009 and 27th January, 2010 read as follows:

“14th September, 2009

Amongst other issues, two issues of general public importance arise for consideration in the present writ petition, namely, the nature, scope and methodology of public hearing that has to be held in accordance with the MOEF's Notification dated 14th September, 2006 and whether units manufacturing asbestos based products should be allowed to function in view of the fact that asbestos has been banned in several countries on the ground that it is a hazardous product.

However, as in the present case respondents have seriously challenged the locus/motive of the writ petitioner, we deem it appropriate to appoint Mr. Sanjay Parikh, Advocate as Amicus Curiae to assist this Court. The Registry is directed to communicate this order to Mr. Sanjay Parikh at 102, New Lawyers Chamber, Supreme Court of India, New Delhi. Mr. J.K. Sethi, learned counsel for petitioner is also directed to furnish a copy of entire paper book to Mr. Sanjay Parikh within a period of one week from today.

List for further hearing on 21st October, 2009.

27th January, 2010

Learned senior counsel appearing for the petitioner and Mr. Sanjay Parikh state that they will confine arguments on the issue of the public hearing and on the other related issues and therefore the hearing need not be postponed on account of the pendency of the writ petition in the matter of *Kalyaneshwari v. UOI*, WP(C) No. 260/2004 before the Supreme Court. We are inclined to accede to this request and hear the matter on the limited issues. Adjourned to 17th February, 2010.”

3. The question “whether units manufacturing asbestos based products should be allowed to function in view of the fact that asbestos has been banned in several countries on the ground that it is a hazardous product” was not pressed since it is already pending in the Supreme Court in *Kalyaneshwari v. Union of India*, WP(C) No. 260/2004.

Background facts:

4. On 7th January, 2003 the Government of India, Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) issued an Office Memorandum on the New Industrial Policy and Other Concessions for the States of Uttaranchal and Himachal Pradesh. The Memorandum states that the Prime Minister, during a visit

to the State of Uttaranchal from 29th to 31st March, 2003 announced that tax and central excise concessions to attract investments in the industrial sector would be worked out for special category States including Uttaranchal. The industries eligible for such incentives should be environment friendly with a potential of local employment generation and use of local resources. The importance of this Office Memorandum is only that Respondent No.8 [Aqua Infra Projects Ltd. (for short Aqua)] apparently decided to establish an industry in the State of Uttaranchal (now Uttarakhand) in view thereof.

5. On 18th May, 2006 the Union Cabinet approved the National Environment Policy and pursuant thereto, a Notification was issued by the Central Government on 14th September, 2006. This Notification was issued in exercise of power conferred by Section 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986. The Notification states, inter alia, that construction of new projects listed in the Schedule thereto shall be undertaken only after prior environmental clearance from the Central Government or the State level Environment Impact Assessment Authority, as the case may be. There is no dispute that the asbestos

based project that we are concerned with requires prior environmental clearance from the Central Government.

6. The Notification further goes on to provide a four-stage process before environmental clearance is granted. The four stages are screening, scoping, public consultation and appraisal. In view of the questions framed, we are concerned only with a part of the public consultation aspect. We are not concerned with the screening, scoping or appraisal of the project proposed by Aqua.

7. Scoping refers to the process by which an Expert Appraisal Committee (for short EAC) determines detailed and comprehensive Terms Of Reference (TOR) addressing all environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought.

8. As mentioned above, apparently with a view to take advantage of the incentives offered by the Office Memorandum dated 7th January, 2003 Aqua applied to the Ministry of Environment and Forests

(MOEF) on 23rd October, 2007 for grant of environmental clearance for setting up a unit for the manufacture of asbestos cement products and fiber reinforced plastic products. It was proposed to set up the unit in Village Akbarpur Urd, Tehsil Laksar, District Haridwar in Uttarakhand.

9. In terms of the scoping requirements of the Notification dated 14th September, 2006 the EAC in its 78th meeting held between 20th and 22nd February, 2008 considered the proposal put forward by Aqua. The TORs were then finalized and spelt out for the preparation of a draft EIA / Environment Management Report so that a meaningful public consultation could take place.

Public consultation:

10. A public consultation in terms of the Notification dated 14th September, 2006 consists of two parts. They are: -

- (a) A public hearing at the site or in its close proximity – district wise, to be carried out for ascertaining the concerns of local affected persons; and
- (b) Obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

As stated in the earlier orders passed by this Court adverted to above, we are concerned only with the first part of the public consultation, that is, a public hearing. It is necessary to clarify and reiterate this because we were often invited to go beyond the brief, as it were.

11. From the terms of the Notification dated 14th September, 2006 it seems, prima facie, that so far as a public hearing is concerned, its scope is limited and confined to those locally affected persons residing in the close proximity of the project site. However, in our opinion, the Notification does not preclude or prohibit persons not living in the close proximity of the project site from participating in the public hearing – they too are permitted to participate and express their views for or against the project.

12. The Notification requires that the public hearing be conducted by the State Pollution Control Board (or the Union Territory Pollution Control Board, as the case may be) in the manner specified in Appendix IV thereto. Thereafter, the State Pollution Control Board is required to forward the proceedings of the public hearing to the concerned Regulatory Authority within 45 days of a request to that

effect from the project proponent. The Notification provides that in case the State Pollution Control Board comes to the conclusion that due to the local situation it is not possible to conduct a public hearing in a manner that may elicit the views of the concerned local persons to be freely expressed, a report in this regard shall be submitted to the concerned Regulatory Authority. Thereafter, the concerned Regulatory Authority may decide that public consultation need not include a public hearing.

13. The second aspect of the public consultation, as already mentioned above, is obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity. If this is contrasted with a public hearing (which is confined to locally affected persons in the close proximity of the project site) then it appears, prima facie, that the responses are required to be invited from persons not necessarily in the close vicinity of the project site (and therefore at a distance). A condition attached to this is that those persons should have a plausible stake in the environmental aspects of the project or activity. It is not clear who determines (and how) whether or not a person has a “plausible stake” in

the environmental aspects of the project or activity. However, since we are not concerned with this aspect of the public consultation, we need not delve into this issue.

14. It must be clearly understood that while the above provisions for public consultation postulate the physical presence of locally affected persons at a public hearing, they are not barred from giving their responses in writing to the concerned authorities involved in the public consultation process, even though they may not have attended the public hearing. Nor, for that matter, do the provisions of the Notification preclude persons at a distance from attending a public hearing.

Public hearing requirements:

15. As mentioned above, Appendix IV to the Notification dated 14th September, 2006 provides the procedure for conducting a public hearing. The process includes several important features. They are:

a. Documentation:

1. Preparation by the project proponent of a draft EIA Report including a Summary EIA Report in English as well as in the local language

strictly in accordance with the TORs communicated in the scoping stage.

2. Copies of these documents are required to be furnished to the District Magistrate, the Zila Parishad or the Municipal Corporation, District Industries Office and the concerned Regional Office of the MOEF.

b. Publicity:

1. The draft EIA Report shall be widely publicized so that interested persons may send their comments to the concerned Regulatory Authority.

2. The summary of the draft EIA Report shall be displayed by the MOEF on its website so that those who have a plausible stake in the environmental aspects of the project or activity may offer their comments.

c. Notice:

A notice of the public hearing is required to be given in a major national daily and one regional vernacular daily at least 30 days in advance of the date of the public hearing. This would give adequate time to all concerned persons to offer their comments and suggestions on the proposed project.

d. Supervision:

1. The public hearing shall be supervised and presided over by the District Magistrate or his representative not below the rank of an Additional District Magistrate. The Presiding Officer is required to be assisted by a representative of the State Pollution Control Board.
2. The entire proceedings of the public hearing are required to be video-graphed for which arrangements shall be made by the State Pollution Control Board.
3. The video recording of the public hearing should be submitted to the concerned Regulatory Authority along with the Minutes of the proceedings.
4. The proceedings at the public hearing do not require a quorum for attendance but the presence of all those at the venue is required to be noted.

e. Actual hearing:

1. A representative of the project proponent shall initiate the proceedings by a presentation on the project and the summary EIA Report.
2. The persons present at the venue must be granted an opportunity to seek information or clarifications on the project from the project

proponent.

3. A summary of the views and concerns expressed in the public hearing are required to be read over to the audience and explained in the vernacular language.

f. Post public hearing:

1. The agreed Minutes of the public hearing shall be prepared and signed by the District Magistrate or his representative on the same day and forwarded to the State Pollution Control Board. A statement of issues raised by the public (both written and oral) and the comments of the project proponent are required to be annexed to the proceedings.

2. The statement of issues raised by the public and the comments of the applicant are required to be conspicuously displayed in the office of the Panchayat within whose jurisdiction the project is located, the office of the concerned Zila Parishad, the District Magistrate and the State Pollution Control Board as well as on the website of the State Pollution Control Board.

g. Miscellaneous:

1. The public hearing is required to be completed within a period of 45 days from the date of receipt of a request from the project proponent.

2. The papers relating to the public hearing shall be sent to the

concerned Regulatory Authority within 8 days of completion of the public hearing.

16. In our opinion, on going through the above requirements of a public hearing, it is quite clear that it is intended to solicit views, comments and suggestions from the locally affected persons or persons in the vicinity of the project, that is, the local populace.

17. What is the purpose of a public hearing? Can largely rural people effectively articulate their concerns on (sometimes) complex environmental issues? Is a public hearing a procedural formality – motions that have to be gone through because of legal requirements? A public hearing is a form of participatory justice giving a voice to the voiceless (particularly to those who have no immediate access to courts) and a place and occasion to them to express their views with regard to a project. Participatory justice is in the nature of a Jan Sunwai where the community is the jury. Such a public hearing gives an opportunity to the people to raise issues pertaining to the social impact and the health impact of a proposed project. Since a public hearing affects the rights of the parties, it must be conducted in a formal or at least in a semi-formal

manner and the video-recording as well as the Minutes of the proceedings must be faithful to what has actually transpired so that the views of the participants are known. The advantage of a public hearing is that it brings about transparency in a proposed project and thereby gives information to the community about the project; there is consultation with the affected parties and they are not only taken into confidence about the nature of the project but are given an opportunity to express their informed opinion for or against the project. This form of a social audit, as it were, provides wherever necessary, social acceptability to a project and also gives an opportunity to the EAC to get information about a project that may not be disclosed to it or may be concealed by the project proponent.

Public hearing guidelines:

18. Therefore, taking the nature and scope of a public hearing into consideration, as mentioned above, the following requirements are necessary by way of laying down ground rules or providing a methodology for conducting a meaningful and purposive public hearing:

(a) **Adequate notice must be given to all the concerned parties:** In our opinion, adequate notice has three vital components.

They are adequate time for preparation, adequate publicity for the benefit of all concerned and availability of all relevant information. The reason for this is that if adequate time is not given for the preparation of views, comments and suggestions to those participating in the public hearing, that public hearing may not be meaningful enough.

In *Canara Bank v. Debasis Das*, (2003) 4 SCC 557 the Supreme Court noted (though in a different context) that time for making a representation should be adequate and that this is a facet of natural justice.

Similarly, it is absolutely necessary that due publicity must be given to the public hearing so that the locally affected persons can participate in large numbers and voice their views. In the absence of adequate publicity, interested persons may remain unaware of the project and of the importance of either supporting or opposing it.

Finally, unless all necessary information is available, no effective public hearing can be conceived by the locally affected persons. Looked at from another point of view, if the draft EIA or its summary is not

available to the local populace, their participation in the public hearing will be nothing but a farce.

(b) **A panel must be available to conduct the public hearing in a disciplined manner:** A District Magistrate or if he is not available, then his representative not below the rank of an Additional District Magistrate must preside over and supervise the public hearing. He should be assisted by a representative of the State Pollution Control Board, who can provide impartial technical inputs, if necessary. The necessity of their presence is to ensure that the public hearing does not go out of control for if it does, then it may be scrapped if a report is given to the concerned Regulatory Authority that it is not practicable to hold a public hearing. Therefore, it is absolutely necessary for the participants to maintain discipline during the course of the public hearing otherwise they will lose an opportunity to express their views with regard to the project and it is the duty of the Presiding Officer of the public hearing to ensure this.

(c) **A faithful record of the views expressed must be maintained:** A public hearing naturally postulates that both immediately preceding the date of hearing and during the hearing itself, the concerned authorities may receive written representations. They

need to be compiled and tabulated in the form of a chart so that all the concerns expressed may be addressed by the project proponent. It is more than likely that at the public hearing oral representations will be made and it is for this reason that there must be a faithful video-recording of the proceedings and a faithful recording of the Minutes so that the views that are orally expressed can also be compiled and dealt with by the project proponent and the EAC. The representations, whether written or oral, serve as a social audit of the project and must be given the due importance and seriousness that they deserve.

(d) **The public hearing must be fair to all participants:** There can be no doubt that a public hearing must be fair. This necessarily postulates that those who support the project should not be shouted down by those who oppose the project and vice versa. The whole purpose of a public hearing would be lost if a free and frank expression of views is stymied by a handful holding a particular viewpoint.

The Supreme Court has said in *Biecco Lawrie Ltd. v. State of West Bengal, (2009) 10 SCC 32* that a proper hearing takes within its ambit a fair opportunity to express views. In a sense, this is an important aspect of natural justice.

(e) **Structured public hearing:** Since the public hearing may be

quite prolonged depending on the number of speakers, in our opinion, it is absolutely necessary to structure the public hearing. It would be advisable if the District Magistrate collects information a day before of the number of speakers and makes a list of speakers at the public hearing and how long they propose to speak. This is necessary for otherwise, the proceedings may be hijacked by local leaders who may have political or other considerations on their mind rather than environmental considerations.

We are of the view that these broad procedures (which are certainly not exhaustive) must be followed for conducting a meaningful and effective public hearing postulated by the Notification dated 14th September, 2006.

Discussion of facts

19. Insofar as the facts of the present case are concerned, what we are required to consider is whether the public hearing conformed to the nature, scope and methodology mentioned above

20. Learned Amicus Curiae pointed out that the draft EIA as well

as the summary EIA Report was not placed on the website of the State Pollution Control Board. According to him, this would vitiate the public hearing. It is true that there is a requirement of adequate notice of a public hearing being given. This is to enable persons who have a plausible stake in the environmental aspects of the project or the ability to attend or otherwise substantively contribute in the public hearing by educating the local populace about the project or activity. Therefore, if the website of the State Pollution Control Board does not carry relevant information about the project or activity for which a public hearing is contemplated, it may amount to giving inadequate notice to the local populace, thereby vitiating the public hearing.

21. We find from a perusal of a writ petition filed by Samarth that there is no averment to the effect that the requirement of placing relevant information on the website of the State Pollution Control Board was not adhered to. In the absence of any such averment, neither the Uttarakhand Environment Protection and Pollution Control Board (UEPPCB) nor the Union of India has adverted to this aspect at all in their counter affidavit. Consequently, in the absence of anything stated one way or the other on affidavit, we find it difficult to accept the

submission of learned Amicus Curiae that the draft EIA or the summary EIA Report were not placed on the website of the MOEF or UEPPCB.

22. At this stage, we may mention that learned Amicus appears to have come to this conclusion from the rejoinder affidavit dated 28th August, 2009 filed by Samarth. Along with this affidavit, a page from the website of the UEPPCB has been annexed and that makes no reference to the project that we are concerned with. In our opinion, three facts need to be noted in this regard: firstly, we are limited to examining whether the public hearing was in conformity with what is expected in law. Therefore, we are not inclined to look into the issue raised, which really pertains to the second aspect of the public consultation. Secondly, the affidavit under consideration was filed belatedly at the stage of rejoinder. As such, none of the parties concerned have had an opportunity to rebut the allegation made. Consequently, we are not inclined to attach much importance to it. Thirdly and more importantly, the web page annexed to the affidavit shows that it was accessed on 26th August, 2009 (and last reviewed in May, 2009) that is much after the public hearing concluded and even after environmental clearance was granted to Aqua. It is, therefore, quite possible (one cannot say one way

or another) that reference to the project may have been deleted from the website of UEPPCB. For this reason, it is not possible to attach much weight to the affidavit filed by Samarth, and the benefit of doubt must go to Aqua.

Was the public hearing farcical

23. The main controversy really centers round the public hearing that took place in this case on 10th June, 2008. Was the public hearing a sham or a farce or was it stage-managed by the project proponent to eliminate any objections to the project or was the public hearing properly conducted and credible? These questions arise on the basis of an allegation that a group of objectors were not given an opportunity of placing their views but were beaten up by the goons of Aqua and then sent away. It is alleged that one of the leading objectors, Shri Sanjay Chopra was even hospitalized as a result of the beating administered to him by the goons of Aqua. We need to know how much truth there is in this allegation and even if the allegation is entirely correct, did the incident vitiate the public hearing.

24. In this regard, it is significant to note that no representative

of Samarth was present at the public hearing. Nevertheless, we are proceeding on the basis that what is stated in the writ petition is based on reliable and verifiable information. It is admitted in the writ petition that the public hearing was presided over by Shri V.S. Dhanik, Additional District Magistrate of the area, Dr. V.K. Joshi, Assistant Scientific officer and Shri Naresh Goswami, Junior Engineer of the UEPPCB.

25. It is averred in the writ petition that a large delegation comprising the local populace led by Shri Sanjay Chopra, State President of National Human Rights Awareness Mission (an NGO) arrived at the venue of the public hearing while it was going on. The delegation had come to oppose the grant of environmental clearance for setting up the proposed project and to register their dissent. Admittedly, the delegation arrived at the venue after the ninth speaker had expressed his views. In our opinion, arriving at the venue in the midst of the public hearing is by itself objectionable. Anyone supporting or opposing the project must have the courtesy to be present when the public hearing commences rather than barging in whenever he so feels like it.

26. A public hearing of this nature is a sober event involving serious and meaningful deliberations. It must, therefore, be attended and conducted with a degree of solemnity and gravity attached to the occasion. If anybody believes, however important he may be, that he can walk into such a public meeting at his convenience as a matter of right, then he is clearly mistaken – no such right inheres in any such person and he must respect the sentiments of the local populace who have assembled to discuss and deliberate on a serious environmental matter. If Shri Sanjay Chopra and his retinue were earnest in their objections and had a meaningful point to make, they should have taken the trouble of punctually arriving at the public hearing rather than arriving there “in a procession chanting slogans opposing the project” while it was in progress.

27. The writ petition goes on to say that the muscle men engaged by Aqua took the law into their own hands, beat up the protestors and threw chairs on them. It is further alleged that Shri Sanjay Chopra and several (unnamed) protestors were hurt, while Shri Sanjay Chopra had to be hospitalized. It is averred that the local police were mute spectators to the violence and the designated officers supervising the

proceedings did not pay any heed to it. According to Samarth, the violence was videographed by a commercial videographer arranged by the protestors. It is stated that the unedited video was broadcast on the local news channel and the violence reported in the local press. It is alleged that the “official” video-recording forwarded to the EAC did not show any violence because it was doctored or manipulated. The bone of contention, therefore, is what actually transpired in the public hearing. In this context, it is also alleged by Samarth that the “official” videographer was commissioned or organized by Aqua and that is why a faithful record of the proceedings was not submitted to the EAC.

28. The record of the case reveals, from the affidavit filed by UEPPCB, that as many as twenty participants expressed their views in the public hearing. These speakers have been named in the counter affidavit by the UEPPCB and, apart from Shri Brahmachari Dayanand (to whom we shall revert to a little later), they are:

Sarvashri Kunwar Pranav Singh “Champion”, MLA, Laksar; Mohd. Tasleem Ahmed, MLA Laldhang, Ravindra Nagar; Sanjay Gupta; Ikbal Singh; Vinod Sharma; Rishipal Singh; Dr. Uma Dutt Sharma; Dharampal Singh; Vinod Chaudhary; Jagmer Singh; Jaypal Singh; Sadharam; Deep Singh; Dayanand, Jitendra Chaudhary; Chandrapal Singh; Ajad Singh and Rajesh Kumar.

29. It is admitted by UEPPCB that during the public hearing a few people arrived at the venue with banners and handouts. They were asked by the Chair to express their views before the participants but they simply walked out. It may be mentioned that the Minutes of the public hearing signed on 10th June, 2008 disclose that almost all the speakers supported the project. After the ninth speaker had expressed his views, some 10 to 15 people entered the public hearing venue shouting slogans and carrying banners. They were requested to stop shouting and put forward their views but they did not do so. Significantly, those present at the public hearing objected to these slogan shouting persons joining in the midst of the hearing. It is clear, therefore, that the slogan shouting protestors who should have normally reached the venue of the public hearing at the time specified did not do so – they decided to join the proceedings while they were going on, which ought not to have been permitted. It is also clear that these protestors did not have the support of the local populace attending the public hearing. To make matters worse, these protestors admittedly shouted slogans. This would amount to an attempt by them to disrupt the proceedings. It is difficult to appreciate how persons who deliberately try to disrupt a public hearing can then argue that there was disruption in the public hearing thereby

vitiating the process!

30. Even if some disruption did take place, was it of such a magnitude as to vitiate the public hearing? It seems that the protest was not of such a magnitude as to result in the proceedings being suspended, which the Additional District Magistrate could have resorted to had the situation gone out of control. It is, therefore, quite clear to us that while there may have been some disruption because of the slogan shouting protestors led by Shri Sanjay Chopra, it was not such as to dissuade those present at the public hearing from continuing their deliberations.

31. But the question still remains – can somebody opposing the project be shut out from voicing his opinion? The Minutes of the public hearing indicate that Shri Brahmachari Dayanand from Matri Sadan in Haridwar did not appear to be in favour of the project. He spoke at the public hearing and was even recalled to explain his objections. It, therefore, appears that those who wanted to express a view against the project were given a fair and reasonable opportunity to do so. That apart, the Minutes of the meeting indicate that when the protestors were asked to come to the dais and express their viewpoint, they declined to

do so. They cannot now turn around and contend that they were not heard in the matter. Given these facts, we are prepared to accept the affidavit of the UEPPCB that the protestors were given a fair opportunity but they did not avail of it.

Other connected allegations

32. As regards the allegation of Samarth that the videographer was engaged or organized by Aqua, this is denied by UEPPCB in its affidavit and it is categorically stated that the State Pollution Control Board had engaged the videographer and payment for his services was made by the State Board itself. We have not been shown any reason to take a contrary view.

33. It has been alleged by Samarth (and this was also pointed out by the learned Amicus Curiae) that even though the Minutes of the meeting held on 10th June, 2008 were purportedly signed on the same day, they were dispatched much later to the MOEF. According to Samarth, the Minutes were ante-dated and the delay in forwarding them was due to the fact that UEPPCB and others involved in the public hearing were busy doctoring the video tape.

34. In its affidavit, the UEPPCB has categorically stated that the Minutes of the public hearing were finalized and signed on 10th June, 2008. It is further stated that 1056 representations were received before the public hearing and 62 were received during the public hearing. The delay in sending the Minutes to the MOEF was occasioned by the fact that print outs of the vide-recording and making out copies of the representations took a few days to organize and consequently the Minutes were dispatched only on 26th June, 2008. In our opinion, this explanation for a few days delay is not fatal and is quite satisfactory.

35. Notwithstanding the fact that a favourable report was submitted to the MOEF that an effective and meaningful public hearing had taken place, Samarth appears to have organized a large number of complaints being forwarded to persons in power to somehow or the other stall the project including by challenging the public hearing process. It appears from the record of the case that some politicians belonging to a particular political party forwarded these representations to the MOEF in July, 2008. Additionally, an NGO called Peoples Vigilance Commission sent a complaint to the Central Vigilance Commission on 8th July, 2008 regarding the public hearing. Kalchakra

News Bureau (also an NGO) sent a complaint on 11th July, 2008 to the Central Pollution Control Board protesting the public hearing. Samarth on its own also sent several other complaints between July and October, 2008 to various authorities contending that the public hearing was not meaningful or effective or fair.

Independent Committee reports

36. The protests sent by various NGOs including Samarth resulted in the MOEF setting up a Committee consisting of Dr. G.V. Subramaniam, Advisor, MOEF and Mr. P.K. Gupta, Environmental Engineer, Central Pollution Control Board to look into some issues and submit a detailed report, inter alia, on the public hearing, the report submitted by the State Pollution Control Board and the video recording of the public hearing itself. A Memorandum to this effect was issued by the MOEF on 16th September, 2008. This Committee was set up primarily as a result of a complaint received by MOEF through the Central Vigilance Commission. The exact terms of the reference, as contained in the Office Memorandum dated 16th September, 2008 read as follows:-

1. To ascertain the initiation of work at the site by the project proponent on the asbestos project without

environment clearance by the Ministry.

2. To review the representations received regarding the project, in the backdrop of the public hearing for the project including the public hearing report submitted by the SPCB and the video recording of the public hearing itself.

3. Broad analysis of the various representations vis-à-vis the likely impact of asbestos production.

37. The two member Inquiry Committee conducted a site visit on 20th and 21st October, 2008 and also met the local populace. They submitted a confidential report on 23rd October, 2008 and concluded that there is a difference in the video recording of the public hearing submitted by the State Pollution Control Board and the video recording submitted by Samarth. The Inquiry Committee also noted that there is no mention of any violence in the Minutes of the proceedings of the public hearing submitted to the MOEF by the Additional District Magistrate.

38. The report of the two-member Committee shows that they met the Block Pramukh and other Gram Pradhans who all informed the Committee that they had supported the project during the public hearing. Some villagers were also contacted by the Committee and though some

of them expressed ignorance about the project or the public hearing, those who were aware supported the project provided there were no adverse environmental or health impacts. Significantly, Shri Sanjay Chopra (opposing the project) did not mention anything about chairs being thrown about or anybody else (other than him) being beaten up.

39. The Committee also examined the video submitted by Samarth (it is not clear to us how Samarth had access to the video recording). This video showed a few protestors with banners and shouting slogans against the project while the public hearing was going on. It also showed an exchange of words between the protestors and the police at the venue. Thereafter, there was sudden violence between the protestors, the police and the local populace at the public hearing. It was observed that chairs were being thrown and the police was trying to control the situation. The Committee also telephonically contacted Shri Sanjay Chopra who was out of town. He informed the Committee that he was beaten up by people hired by the project proponent and that he was opposing the project due to its likely adverse environmental and health impact. He informed the Committee that he wanted to express his views on the project but was not allowed to do so.

40. It is significant to note that the Committee also contacted Shri Brahmachari Dayanand of Matri Sadan, Haridwar who had expressed his opposition to the project in the public hearing. Shri Bhahmachari Dayanand informed the Committee that he could not notice the violence as he was sitting near the dais and the incident took place at the entry of the pandal. He informed the two-member Committee that he was allowed to express his views and stated that some protestors from Matri Chhaya Parvatiya Vikas Samiti, a voluntary organization from Dehradun (apparently not connected either with Shri Sanjay Chopra who is from Haridwar or his NGO) came to participate in the public hearing but were not allowed to enter but were beaten up. In other words, Shri Brahmachari Dayanand was unaware of the incident involving Shri Sanjay Chopra, but he was aware of the beating up of some other people not connected with Shri Sanjay Chopra.

41. It is in this light that the conclusion of the two-member Committee is to be looked at. It is clear from the record that there was some disruption in the public hearing but it was not close to the dais nor was it of such a magnitude so as to call off the public hearing. A vast majority of the locally affected persons supported the project but those

from some other areas tried to enter the pandal while the public hearing was going on (when they should have come at the commencement of the public hearing) but they were denied entry. These protestors did not represent the views of the local populace and the lone dissenter Shri Brahmachari Dayanand was allowed to freely express his views at the public hearing. In the light of what Shri Brahmachari Dayanand stated before the Inquiry Committee, those who wanted to speak but were not allowed to do so belonged not to Shri Sanjay Chopra's NGO in Haridwar but to Matri Chhaya Parvatiya Vikas Samiti, a voluntary organization from Dehradun, who do not seem to have lodged any complaint.

42. Yet another Inquiry Committee was set up by the MOEF to give a report with regard to the public hearing. This inquiry was conducted by the District Collector, Haridwar at the instance of the MOEF on the basis of a complaint made by Samarth. In his Report dated 31st October, 2008 the District Collector stated that sufficient police force was available at the site of the public hearing and both the Station House Officers deployed at the site denied any incident of a fight. The Report does mention that 10 to 15 persons carried wooden

boards and banners and raised slogans and arrived in the form of a procession to protest against the project but they were opposed by the local populace who were supporting the project. It is stated that there was no breach of peace. Thereafter, these 10 to 15 protestors were led away from the site. The District Collector goes on to say that those opposed to the project raised slogans instead of putting up their case peacefully. This was objected to by the local residents.

43. Apparently after examining the report submitted at its instance into the events that took place in the public hearing on 10th June, 2008 the Central Vigilance Commission closed the complaint. However, it was directed that the specific conditions laid down by the EAC while granting environmental clearance should be ensured by the Chief Vigilance Officer of the MOEF. This was also communicated to Samarth in response to a representation made by it. Despite the environmental clearance having been granted (or perhaps because of it together with the specific conditions) the Central Vigilance Commission did not think it appropriate to take the complaint to its logical conclusion.

Conclusion on the first question

44. On the basis of the material placed before us, we have no hesitation in concluding that all the reports clearly bring out that despite an attempt to disrupt the public hearing, it was conducted and concluded after giving an opportunity of hearing to all those who wanted to express their views. The only person who was not allowed to express his view (and there is serious doubt about this) was Shri Sanjay Chopra who led a small group of about 10-15 persons. Given the fact that the group was shouting slogans and entered the venue of the public hearing, not when it started but while it was in progress, it does appear that their prime motive was not to meaningfully participate in the public hearing but to disrupt it. That they were not able to do so is unfortunate for them.

45. At this stage, it is worth mentioning that the public hearing was attended was a very large number of people, the lowest estimate being about 1000 persons. Those who chose to disrupt the meeting were hardly 10-15 persons. It is also worth mentioning that a completely independent body like the Central Vigilance Commission (whose credentials have not been doubted by Samarth) did not find it worth it's

while to pursue the complaint made to it about the conduct of the public hearing. On these facts, we reject the contention of Samarth that the public hearing was vitiated or that it was a sham hearing or a farce.

46. In view of our decision on merits of the controversy, we think it unnecessary to decide whether the writ petitioner is a bona fide public interest litigant or not.

47. The writ petition is dismissed with costs of Rs.25,000/- payable to Aqua.

MADAN B. LOKUR, J.

May 28, 2010
kapil

MUKTA GUPTA, J.

Certified that the corrected copy of the judgment has been transmitted to the main Server.