

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WP(C) No. 328 of 2020

Date of Decision: 19.11.2020

Shri Shaniahlang Suchen

Vs.

State of Meghalaya & 3 Ors.

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. N. Syngkon, Adv.  
For the Respondent(s) : Mr. A. Kumar, AG, with  
Mr. A.H. Kharwanlang, GA. (R 1-3)  
Mr. K. Paul, Adv. (R 4)

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1. Matter has been taken up via Video Conferencing.
2. Heard Mr. N. Syngkon, learned counsel for the Petitioner who has submitted that a Public Notice was issued by the Meghalaya State Pollution Control Board on 16.10.2020 whereby, suggestions, comments and objections on the matter relating to the environmental aspects for the proposed Limestone and Shale Mining Project over an area of 42.051 Ha. at village Brishyrnot, East Jaintia Hills District, Meghalaya by M/s Star Cement Meghalaya Ltd. was sought to be elicited from all local affected persons. The said public hearing is however confined to only 100 people and the venue of the same was fixed at the campus of the Deputy Commissioner Office, East Jaintia Hills District, Khliehriat. The date fixed is 21.11.2020 at 11:00AM.
3. The only grievance of the Petitioner is that, the same is in violation of the notification dated 14.09.2006, published by the Central Government under

Sub-section (1) Clause (v) of Sub-section 2 of Section 3 of the Environment (Protection) Rules, 1986 which stipulates that the public hearing should be held at the site or its close proximity. The restriction imposed by allowing only 100 people for attending the said public hearing will also incapacitate interested persons to put forward their concerns.

4. It is therefore prayed that the said public hearing may be held at a later stage at the site or in its close proximity in a normal situation. In this regard, it is also submitted that a letter dated 27.10.2020 was issued upon the Respondent No.2/ Meghalaya State Pollution Control Board to cancel the said public hearing scheduled to be held on 21.11.2020, but no action has been taken in this regard so far.

5. The learned counsel has therefore prayed that this Court may be pleased to hear the parties and to set aside and quash the said public notice dated 16.10.2020.

6. The learned Advocate General, Mr. A. Kumar assisted by Mr. A.H. Kharwanlang, learned GA for the Respondent No. 1-3 in his reply has firstly submitted that the locus of the Petitioner is challenged on the ground that he has not exhibited any personal grievance in this instant petition, but from the tone and tenor of the averments made in this petition, it appears that the reference is to a group of persons who may be affected by the said public hearing and as such, the instant petition would assume the nature of a Public Interest Litigation, which would then render this Court without jurisdiction to try the same.

7. The learned AG has also submitted that the said public hearing has been postponed from time to time at the instance of certain interested parties and this time too, the process is sought to be scuttled by the Petitioner, which would not be in public interest.

8. As to the fixation of the number of persons to attend the said public hearing at 100, the learned AG has pointed out that in the Public Notice the 16.10.2020 at paragraph 2, it has been clearly mentioned that the restriction to a maximum of 100 people per hearing was on the basis of the notification issued by the Ministry of Environment Forest & Climate Change, New Delhi

in its office memorandum F.No. 22-25/2020-IA.III dated 14.09.2020.

9. Again, the learned AG has submitted that the notification of the Ministry of Environment and Forests dated New Delhi 14<sup>th</sup> September 2006 which was annexed as Annexure – 2 to this petition, at paragraph 7(i) of the same, it is stipulated that the environmental clearance process on new projects will comprise of a maximum of four stages, Stage 3 (i) being Public Consultation. The same is reproduced as follows:

*“(i) Public Consultation” refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate ...”.*

3(ii)(a) reads as:

*“(ii) The public consultation shall ordinarily have two components comprising of :-*

*(a) a public hearing at the site or in its close proximity – district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons.”*

10. It is also further submitted that at Stage 3 (v) of the said notification dated 14.09.2006, it is provided that if it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, public consultation in the case need not include public hearing.

11. The learned AG has also referred to another communication of the Ministry of Environment, Forests and Climate Change dated 18.06.2020 under the subject *“Brishyrnot Limestone Deposit-I with proposed production of Limestone capacity of 2.507 Million TPA and Proposed Shale Production Capacity of 0.217 Million TPA in the Mine Lease area of 42.051 ha, by M/s Star Cement Meghalaya Ltd., located at Villages Brishyrnot, Tehsil Khliehriat, District- East Jaintia Hills, Meghalaya – Amendment in TOR for exclusion of Public hearing component from the public consultation – Regarding.”* At paragraph 3 of the same, the Ministry after examination of the

recommendation of the Meghalaya State Pollution Control Board, has allowed the public hearing to be convened at the district headquarters near the DC's Office.

12. Yet another point on the issue of maintainability of this instant petition raised by the learned AG, is the reference to Section 14(1) of the National Green Tribunal Act, 2010 which provides as follows:

*“14(1). The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I...”*

13. Under Schedule I the Environment (Protection) Act, 1986 is also included and as such, it is submitted that this instant application is not maintainable before the High Court.

14. Finally, the learned AG has cited the case of ***Bhopal Gas Peedith Mahila Udyog v. Union of India & Ors; (2012) 8 SCC 326*** and has submitted that the Hon'ble Supreme Court at paragraph 40 of the same has opined as follows:

*“40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short “the NGT Act”) particularly Sections 14, 29, 30 and 38 (5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short “NGT”). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment of all concerned.”*

15. In the light of the above, the learned AG has submitted that this petition may be dismissed at the threshold as devoid of merits.

16. Mr. K. Paul, learned counsel for the Respondent No. 4 has submitted that from the related notifications, it is seen that public hearing is restricted to 100 people at a particular time, however the same is not limited to 100 people since the provision allows for batches of 100 people to be heard as and when required.

17. On careful consideration of the submissions and contentions made by the learned counsels for the parties before this Court, it is understood that the proposed project concerns an area of about 42.051 Ha. in a village called Brishyrot, under East Jaintia Hills District. The affected persons would naturally be residents of the said village. The Petitioner as it appears from the record is a resident of Lakadong village, East Jaintia Hills District and as such, is apparently not a resident of Brishyrot village. Therefore, the challenge to his locus is maintainable.

18. Be that as it may, what can be understood from the submission of the learned AG is that the restriction of 100 people per hearing is provided by the relevant notifications and as such, it is not an arbitrary act on the part of the authorities concerned to issue the impugned Public Notice.

19. As to the venue of public hearing as pointed out above, the communication dated 18.06.2020 issued by the Ministry of Environment, Forests and Climate Change has clearly provided that change of venue under the circumstances can be affected. This particular communication has not been challenged by the Petitioner herein.

20. It may also be pointed out that as far as public representation is concerned, if there are more than 100 people who wanted to be heard, there is always a provision for further and subsequent hearings and as such, the cause of the residents of the affected village will be addressed in due course.

21. The authority cited by the learned AG as regard the jurisdiction of the NGT also has relevance in this matter which is duly noted herein.

22. This being the case, I find no substance in this instant petition and the same is hereby rejected.

23. Petition disposed of. No cost.

**Judge**

Meghalaya

19.11.2020

"N.Swer, Stenographer"

