

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 88 of 2023

=====

VIKRAMBHAI NANJIBHAI DABHI

Versus

STATE OF GUJARAT & ORS.

=====

**Appearance:**

MR DHRUV D DESAI(9909) for the Applicant(s) No. 1

for the Opponent(s) No. 5

MS HETAL PATEL, ASST.GOVERNMENT PLEADER for the Opponent(s)

No. 1,3,4

MR SIRAJ R GORI(2298) for the Opponent(s) No. 6

MR. HARDEEP L MAHIDA(7112) for the Opponent(s) No. 2

=====

CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA  
AGARWAL

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 02/08/2024

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE  
MRS. JUSTICE SUNITA AGARWAL)

[1] Pursuant to the order dated 21.02.2024 passed by this Court, Affidavit-in-reply dated 19.03.2024 has been filed by the Collector and District Magistrate, Bhavnagar referring therein to various guidelines / circulars / orders / Government resolutions operating in the field. There is a reference of the Government Resolution issued by the State Government through the Revenue Department resolving to allot government

based land for construction of Wind Farm Project on lease-hold basis. It is stated that for clearance of No-objection Certificate, the concerned authorities are State Electricity Board and State Nodal Agencies.

[2] As per the guidelines to ensure healthy and orderly growth of wind power sector issued on 13.06.1996, Indian Renewable Energy Development Agency is to carry out appraisal of Wind Power Project in accordance with the guidelines. As per the guidelines for development of Onshore Wind Power Projects issued on 22.10.2016, issued by the Central Electricity Authority and other regulatory bodies, pertaining to issues relating to Micrositing, de-commissioning, health and safety of Wind Power Projects, a considerable safe distance is to be maintained at point (iv) and (v) of the Micrositing Guidelines issued by the Ministry of New and Renewable Energy, Government of India with its letter dated 22.10.2016 appended at Page '219' of the Paper-book. A perusal of Clause (v) indicates that there is a categorical instruction in the Micrositing criteria to the effect that the developer(s) shall not site wind turbines within 500 mts of any dwelling for the mitigation of noise. Whereas, Clauses (iv) and (v) in Paragraph '5' pertaining to Micrositing reads as under:

*“iv. Developer(s) shall maintain a distance of*

*HH+1/2RD+5m (Hub Height+ Half Rotor Diameter +5 meters) from Public Roads, railway tracks, highways, buildings, public institutions and EHV lines.*

*V. Developer(s) shall not site wind turbines within 500 m of any dwelling for the mitigation of noise”*

[3] The contention is that the Micrositing is the optimization of the energy production through the correct placing of wind turbine generators in the Wind Farm area considering all physical constraints of the area. The developer has to make an application to the Chairman, Gujarat Energy Development Agency (GEDA) along with Micrositing plan for the development permission. The Respondent No.2 namely the Chairman, Gujarat Energy Development Agency (GEDA) is, thus, considered to be the State Nodal Agency to issue No-objection Certificate (NOC) to approve the permission for setting up the wind power project.

[4] With these submissions, the Collector has made his comment on the observation in the Inquiry Report on the sites of three villages namely Village Sakhvadar, Khandhera and Sartanpur, Ta.Talaja, Dist.Bhavnagar to state as to whether there is any violation adhering to the norms contained in the Circular dated 22.10.2016 issued by the Ministry of New and Renewable Energy, Government of India.

[5] It is stated in the affidavit of the Collector that in compliance of the Order dated 21.02.2024, the office of the Collector had conducted fresh inquiry on 28.02.2024 by constituting a team of three members namely the Deputy Superintendent of Police, Mahuva, District Inspector of Land Reforms (DILR), Bhavnagar and Regional Officers of GPCB namely Gujarat Pollution Control Board, spot inspection of the site in question and measurement of distance of Wind Power Project from dwelling and school and to compare noise with ambient air quality standards. The copy of the Inquiry Report dated 05.03.2024 is appended as Annexure - 'R-5' to the said affidavit. A further copy of the measurement conducted by DILR on 28.02.2024 is appended as Annexure - 'R-6' to submit that as per the details of Inquiry Report on the spot inspection of the site in question of three villages, which had been notified for establishing and commissioning of Wind Power Project. The Report stated as under:

Sr.No.	Name of Village	Details of Windpower Project	Remarks
1.	<u>Sartanpar</u>	MUV 124	Primary School is at 304 meters from the Wind turbine site.
		MUV 125	Primary School is at 792.43 meters from the Wind turbine site.

2.	<u>Khandhera</u>	MUV 103	Primary School is at 197.74 meters and dwelling are at 306.83 meters from the Wind turbine site.
		MUV 101	Primary School is at 616.35 meters from the Wind turbine site.
		MUV 102	Primary School is at 1254.25 meters from the Wind turbine site.
3.	<u>Sakhvadar</u>	MUV 132	Dwelling is at 526.41 meters from the Wind turbine site.
		MUV 133	Dwelling is at 1036.83 meters from the Wind turbine site.

[6] It is, thus, stated that there are two wind turbine situated i.e. *MUV 124* situated at Village Sartanpur and *MUV 103* situated at Village Khandhera where, there is violation to the norms contained in Paragraph V (v) pertaining to Micrositing of the Circular dated 22.10.2016 issued by the Ministry of New and Renewable Energy, Government of India, inasmuch as, the distance of two wind turbine sites is less than 500 mts from the primary school and dwelling unit situated on the spot. It is categorically stated that at Village Khandhera, there is a primary school and dwelling unit within 500 mts of which wind turbine site namely *MUV 103* has been installed. It is, then, sought to be submitted that in an inquiry conducted by the Regional Officer, GPCB, Bhavnagar on 28.02.2024, it was observed that there was no noise pollution and thus, there

was no violation of the Noise Pollution (Regulation and Control) Rules, 2000 at all, in any of the seven wind turbine sites situated at three villages of Dist.Bhavnagar noted hereinbefore.

[7] It is further stated that the office of the Collector had sent a Communication dated 01.03.2024 to the office of the Respondent No.2 namely Gujarat Energy Development Agency (GEDA) to inquire as to whether any amended guideline has been framed after 22.10.2016 and in reply to the same, a Communication dated 04.02.2024 has been received from the office of the Collector in respect of the status of the prevailing guidelines and details of permission granted to the developer by the Respondent No.2 Gujarat Energy Development Agency (GEDA).

[8] The averments in the affidavit of the Collector, Bhavnagar, thus, indicates that the wind turbine sites installed by the private Respondent No.6 are not confirming to the norms issued by the Ministry of New and Renewable Energy, Government of India on 22.10.2016 and two of the wind turbine sites at Village Sartanpur namely *MUV 124* and Village Khandhera namely *MUV 103* are not confirming to the norms laid down in the said Guideline.

[9] We may further note that though there is a reference in the affidavit of the Collector about the Communication dated 04.02.2024 sent by the Respondent No.2 namely the Gujarat Energy Development Agency (GEDA) explaining the status of the prevailing guidelines and details of permission granted to the developer by it, but there is further complete silence in the affidavit of the Collector about the violations, which had been reported in the Report dated 28.02.2024, the measurement sheet prepared by the DILR, Bhavnagar, a member of the team constituted by the Collector, Bhavnagar in compliance of the Order dated 21.02.2024 passed by us.

[10] For the silence on the part of the Collector, it is required that a specific response of the Respondent No.2 namely the Chairman, Gujarat Energy Development Agency (GEDA) shall be brought before us. We, therefore, require the learned advocate for the Respondent No.2 namely Mr Hardeep L Mahida to file personal affidavit of the Chairman, Gujarat Energy Development Agency (GEDA), Udhyog Bhavan, Sector 11, Gandhinagar namely the Respondent No.2 herein, who shall make an inquiry into the violations reported in the Inquiry Report submitted by the Collector along with his Affidavit dated 19.03.2024 and submit his response on the

Inquiry Report as to how and in what manner, permission was granted by the Gujarat Energy Development Agency (GEDA), which is the State Nodal Agency for setting up Wind Power Project, in violation of the norms contained in the Circular dated 22.10.2016 of the Ministry of New and Renewable Energy, Government of India.

[11] We may also note the contention of the learned advocate appearing for the private Respondent No.6 that the restriction of 500 mts would not be attracted in the case of setting up a windmill near the primary school as it would come within the meaning of public institutions and would be covered by Clause V (iv) of the Guidelines issued by the Circular dated 22.02.2014. At this juncture, prima facie we are not convinced with the said submission of the learned counsel appearing for the private Respondent No.6, inasmuch as, it is not acceptable to us that a primary school can be included in the category of a public institution so as to permit the developer to install windmill within the distance of 500 mts of the school. In our prima facie opinion, the guidelines framed for healthy and orderly growth of the windmills are with the vision of maintaining the standards of health for both the villagers and children studying in the primary school, and it would be the same standards as in case of dwelling units.



[12] Be that as it may, an independent inquiry shall be initiated by the Chairman, Gujarat Energy Development Agency by constituting a team and inviting comments from all concerned officials of the Agency as also from the Office of the Collector, and officers of the other departments as well, who are collectively responsible for ensuring that the wind turbine sites are set up strictly in conformity with the Circular dated 22.10.2016 of the Ministry of New and Renewable Energy, Government of India.

[13] Let the personal affidavit of the Chairman, Gujarat Energy Development Agency (GEDA) be brought before us on the next date fixed.

[14] List the matter on **30.08.2024**.

**(SUNITA AGARWAL, CJ)**

**(PRANAV TRIVEDI, J)**

SAHIL S. RANGER