

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. 7734 OF 1997

CENTER OF INDIAN TRADE UNIONS,
A FEDERATION OF REGISTERED
TRADE UNIONS

...PETITIONER(S)

Versus

STATE OF MAHARASHTRA

...RESPONDENT(S)

J U D G M E N T

Deepak Gupta, J.

1. The petitioner had challenged the execution of the Power Project Agreement (PPA) and the modified power project agreements first of which was executed in the year 1993 by the Maharashtra State Electricity Board (for short 'the MSEB') in favour of Dabhol Power Corporation Limited (for short 'DPC') before the Bombay High Court.

2. Though the High Court came to the conclusion that the action of the Board and the Governments concerned was

questionable and that everything was not above board, it dismissed the writ petition(s) on the ground that the petitioner had not been able to place on record before the Court any material justifying the allegations as regards corruption, bribery, fraud and misrepresentation.

3. Thereafter, the petitioner filed the present petition. On 02.05.1997, this Court issued notice only on the following issue:

“(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.”

4. By the same order, this Court refused leave in so far as the question of the validity of the project and contract for Dabhol Power Project was.

5. While the special leave petition was pending, the State of Maharashtra appointed a Committee headed by Dr. Mahdav Godbole, former Home Secretary (known as ‘Godbole Committee’) to go into the matter.

6. 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, 1952. Whereas 2 members felt that that a Judicial Commission of Inquiry should be constituted, 3 members did not agree with the said proposal.

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

8. The Union of India filed a suit before this Court (Original Suit No.2 of 2003 – Union of India vs. State of Maharashtra & Anr.) and an order was passed in the said suit staying further proceedings of the Kurdukar commission of inquiry. This suit

came to be finally dismissed in the year 2014. Thereafter, the matter came up before this Court on 18.02.2015 when learned counsel appearing for the State of Maharashtra prayed for some time to find out whether Justice Kurdukar would be in a position to resume the proceedings. No response has been filed. The fact remains that the Commission has not functioned even after dismissal of the suit.

9. It appears that nothing much was done and the matter came up before this Court on 07.03.2018 when this Court directed the State of Maharashtra to inform the Court whether it would like the Kurdukar Commission of inquiry to continue or would they like the case to be argued on merits. The State of Maharashtra subsequently filed an affidavit that due to long efflux of time it was no longer useful or feasible to continue with the judicial commission of inquiry.

10. Therefore, the hearing in this case is limited to the question as to whether the judicial commission of inquiry should continue or not.

11. Dr. Rajeev Dhawan, learned senior counsel appearing as amicus curiae, urged that in view of the serious allegations of corruption and abdication of duties by various authorities and officials, it would be in the interest of justice to continue with the commission of inquiry and in case Justice Kurdukar was not able to continue with the commission of inquiry, the same could be headed by some other retired Judge of the Supreme Court of India.

12. Dr. Dhawan drew our attention to the various portions of the report submitted by Dr. Godbole committee. We may make reference only to following portion:

“The Committee is troubled with the failure of governance that seems to have characterised almost every step of the decision making process on matters relating to DPC. This failure of governance has been broad, across different governments at different points of time, at both the State and the Central level, and across different agencies associated with examining the project, and at both the administrative and political levels. It strains belief to accept that such widespread and consistent failure to execute assigned responsibilities is purely coincidental. Though the Committee was given certain additional terms of reference, specifically, item (3) of Resolution No. PSP 2001/CR3448/NRG-2 dated March 9, 2001, it has unanimously decided that it is not the proper forum to investigate such matters to the degree that would be required. The Committee,

in the short time allocated to it, is unable to determine reasons for the consistent lapses, but is extremely concerned at it.”

13. The Committee has found serious infirmities in the manner in which the PPA was executed, the manner in which it was re-negotiated, the manner in which the tariff was fixed etc.. As per the Committee, everything was done in a manner which helped DPC and caused loss to the MSEB and the public at large.

14. It would be pertinent to mention that the foreign company Enron, which was involved, has abandoned the project. The project is virtually working at half the capacity and the rate of production of electricity is so high that the project has become economically unviable. In these circumstances, Dr. Dhawan urged that this Court should continue with the commission of inquiry.

15. We are of the considered view that though normally in such a case a judicial inquiry should have been conducted but as far as the present case is concerned, more than a quarter of century has elapsed since the first PPA was executed. The foreign corporation and the original project proponents are no longer

available. Most of the senior officials would have retired and virtually no action can be taken against them. Furthermore, the commission of inquiry even if continued or constituted afresh, will take its own time and, as opined by 3 Members of the Godbole Committee, the constitution of such commission of inquiry would serve no useful purpose. This was the stand in the year 2001 and has greater force 18 years later.

16. In view of the long delay and in view of the fact that due to non-availability of many persons involved, no useful purpose would be served in continuing with the judicial commission of inquiry, we close the petition in the peculiar facts and circumstances of the case.

.....CJI.
(Ranjan Gogoi)

.....J.
(Deepak Gupta)

.....J.
(Sanjiv Khanna)

New Delhi
April 11, 2019