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

\+ **W.P.(C) 3353/2013**

Date of Decision**: 21.05.2026**

IN THE MATTER OF:

NUCLEAR POWER CORPORATION OF INDIA LIMITED

.....Petitioner

Through: Mr. E.R. Kumar, Mr. D.P. Mohanty, Mr. Aditya Sharma and Mr. Jayant Bajaj, Advocates.

versus

SP UDAYKUMAR .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The instant petition is for the following reliefs:

> *"a) quashing and setting aside the Order passed by the Ld. CIC dated 30.04.2015 in so far as it relates to the providing of the copies of the Safety Analysis Reports;*
> *b) and to pass such other direction or order as this Hon'ble court may deem fit and proper in the facts and circumstances of the case and in the interests of justice."*

2. The petitioner- Nuclear Power Corporation Of India Limited (**NPCIL**) is challenging order dated 30.04.2012 passed by the Central Information Commission (**CIC**), whereby, it has been directed to provide

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copies of the Safety Analysis Report (**SAR**) and Site Evaluation Report (**SER**) of Kudankulam Nuclear Power Plant (**KKNPP**) Reactor – I and II in Tamil Nadu to the respondent after severing any proprietary details of designs and also to publish the same on their website.

3. Learned counsel appearing on behalf of the petitioner submits that, the SER has already been furnished to the respondent and also uploaded on its website, after the institution of this petition. The only question which remains for consideration is whether the impugned directions are sustainable, insofar as they relate to the SAR.

4. The facts of the case would indicate that the respondent-Right to Information (**RTI**) applicant had, in the year 2010 when the KKNPP was being constructed, sought information pertaining to Reactor-I and II thereof, including the SAR and SER and Environment Impact Assessment Report (**EIAR**).

5. The Central Public Information Officer (**CPIO**) of NPCIL *vide* reply dated 24.03.2010, stated that the EIAR would be furnished to the respondent upon payment of the requisite fees. The said EIAR was thereafter, furnished to the latter on 04.05.2010. However, the request for copies of the SAR and the SER was rejected on the ground that the same, which contain proprietary details of the reactor's design, and therefore, were exempted under Sections 8(1)(a) and 8(1)(d) of the Right to Information Act, 2005 (**RTI Act**).

6. On 11.07.2013, after issuing notice to the respondent, this Court stayed the impugned order, insofar as it relates to the SAR and SER. Initially, the respondent had appeared before the Court. However, since 19.05.2016, he has remained unrepresented. It, thus, appears that he has lost interest in the prosecution of his RTI application.

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7. Learned counsel for the petitioner submits that the Supreme Court in ***G. Sundarrajan vs. Union of India and Others***,[1] wherein, safety-related aspects with respect to KKNP were up for consideration, the Court has noted that the design of the power plant plays a key role in addressing the aforesaid concerns. Paragraph nos. 51-55, 79-87 and 94 of the said decision, on which learned counsel places reliance, are extracted below for reference:

> "***51***. *The Government of India, following its national nuclear policy, decided to set up an NPP in the southern part of the country. DAE, for that purpose constituted a Site Selection Committee (SSC) for selecting a suitable site in the Coromandel Coast of Tamil Nadu. The Committee, after surveying various sites, selected Kudankulam in Tirunelveli District of Tamil Nadu as the most suitable place for locating NPP. Npcil also made a detailed study of the selected site in the light of the Code of Practice framed by AERB regarding safety in NPP siting. Kudankulam, the site located, is situated on the shore of Gulf of Mannar near the south-eastern tip of India in the coastal track at an elevation of +3 to +45m above MSL forming the southern fringe of soil covered plains. Most of the rivers in the area are seasonal and there are no major lakes, dams or ponds existing within 20 km radius around the project site. The climate in the area is arid and is similar to other coastal regions. As per IMD Station at Kanyakumari, the wind speed is in the range of 6 to 30 km/hr. The ambient temperature varies in the range of 21°C - 34°C, while the relative humidity ranges from 68% to 80%. Geologically, the site is made up of the Archean super group of crystalline rocks, sedimentary rocks of Precambrian origin and recent quaternary deposits. The geological profiles studied up to 80m depth indicates that the site comprises of highly metamorphosed rocks with granulated and amphibolites faces of charnokites belonging to the archean super group. NPP site is situated in the south of Pandian movable belt, the metamorphic rocks of which are the foundations of ancient platform.*
>
> ***52***. *The NPP site is situated in an area with expected earthquake intensity of up to V on the modified intensity scale. The site area falls within Seismic Zone II which is a moderately stable area as per the seismic zoning map (SZP) of India. The strongest earthquake near this area and within the Indian peninsula was Coimbatore earthquake of February 1900. The epicentre of this earthquake was situated at a radial distance of 300 km from the proposed NPP site. The site of the plant lies*

[1] (2013) 6 SCC 620

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in Zone II of SZP of India, where shocks of intensity VI or magnitude 5 can occur. In the region, no shock of magnitude 5 is known to have occurred at less than 100 km distance from the plant site. Within the distance of 300 km, some 27 earthquakes of intensity IV to VIII or a magnitude ranging between 4 to 5.7 are known to have occurred from 1341 to 1972.

***53**. A detailed study was also conducted as to whether a site-plant interaction would reduce any radiological risk or others of an unacceptable magnitude. Radiological risk to nuclear plant due to external events should not exceed the range of radiological risk associated with accidents of internal origin and the possible radiological impact of an NPP on the environment should be acceptably low for normal operation and accident conditions and within the stipulated criteria for radiological safety. In evaluating the suitability of a site for locating an NPP, the effect of external events (natural and man-induced) on the plant; effect of plant on environment and population; and implementation of emergency procedures particularly protective counter-measures in the public domain, had to be addressed. SSC study also included the assessment of seismicity, location of faults, geology, foundation conditions, meteorology, potential of flooding (from tsunami, storm surge, etc. at coastal sites and from rain, upstream dam break, etc. at inland sites), proximity to airports, military installations, facilities storing explosive and toxic substances, etc. The environmental setting comprising of biodiversity including flora and fauna, marine ecology, etc. in the region was also evaluated. SSC had taken care of all those aspects before making its recommendations to the Government. Npcil, Union of India and other statutory authorities had taken care to follow the practice laid down by AERB on safety in NPP site.*

***54.** Kknpp consists of two VVER-1000 types of units having 1000 MWe rating each. VVER reactors being established at Kknpp belong to the family of Advance Pressurised Water Reactors (PWRs) and presently 439 nuclear reactors are under operation in the world and about 209 of them belong to PWR family, including 55 VVERs. The construction activities had started at the site on 31-3-2002 and two units are being implemented with the technical assistance of Russian Federation as per the inter-Governmental agreement (IGA) between India and Russia. As per the agreement, design and supply of major equipments are done by Russian Federation, while construction, erection, commission and operation are being carried out by Npcil.*

***55**. KKNPP is of a most modern design. PWR cooled and moderated by light and water and its core containing the nuclear fuel is located inside a pressure vessel. There are no pressurising tubes, no graphite*

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moderator and no boiling of water in the core. The reactor is located inside an airtight primary containment building which is surrounded by secondary containment. There are other design features in NPP which assure adequate core cooling under deconceivable off-normal conditions including total loss of electric power. Even for the hypothetical case of a core meltdown, a core-catcher is provided where the molten core is retained and cooled and the double containment ensures that there will be no significant radiological impact in the public domain. NPP, has been divided into three stages, first stage comprises of building PHWRs and using natural uranium. The second stage includes setting up fast breeder reactors backed by reprocessing plants and plutonium-based fuel fabrication plants. The third stage is based on the thorium-uranium-233 cycle.

***79**. We are all exposed to the naturally occurring radiation in our daily lives. Cosmic radiation from outside the solar system is also common phenomenon. The earth's crust is radioactive, so also above the earth's surface where we fly by aeroplane, we also get doses of radiation. Medical diagnostic treatment such as x-ray, CT scan, angiography, angioplasty also radiates radioactive dose. However, the development of nuclear reactors which, for the first time, made possible the production of radioisotopes of many different elements, expanded the field of radioactive materials. Production and use of it, therefore, is bound to create a little bit of marginal radiation which seldom can be prevented.*

***80**. The Atomic Energy (Radiation Protection) Rules ("the Radio Protection Rules" now) were initially framed and revised in 2004. According to the Rules no person could handle radioactive material or operate any radiation generating equipment except in accordance with the terms and conditions of a licence. The Atomic Energy (Control of Irradiation of Food) Rules, 1990 (revised in 1996) seeks to regulate the irradiation of foods in the country. The provisions of the Act, statutory rules and regulations, various codes, safety standards, etc. issued by AERB buttressed by the technical assistance provided by IAEA, NEA, World Association of Nuclear Operations (WANO), etc. are being followed in India in respect of 20 operating power reactors which are existing in this country. Safeguarding the nuclear plants, radioactive materials and ensuring its physical security have therefore become a central part of nuclear law. Risks arising from NPP, do affect not merely the country which chooses to use that technology but can have catastrophic consequences to the neighbouring countries as well. Non-proliferation, disarmament and peaceful use are stated to be the three pillars of all the international conventions. Nuclear technologies and techniques, it is well accepted, can offer vital benefits for improving human well being, like health care, radio therapy, food security, agricultural advantages to the present and generation.*

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81. *The Prime Minister of India, as already indicated, ordered a fresh review of all safety of NPPs, on 11-3-2011, immediately after the accident at Fukushima NPP, Japan with respect to external events. The Prime Minister of India had emphasised that the safety of nuclear power plants was a matter of highest priority for the Government and called for safety audits of all NPPs. Npcil, the operating agency, constituted separate task forces to review safety of NPPs depending on types of reactor designs and their vintages in India. Npcil constituted broad categories of Indian NPPs to make an assessment of:*

- *Boiling water reactors (BWR) (TAPS 1 and 2);*
- *Pressurised heavy water reactors (PHWRs) at RAPS 1 and 2;*
- *PHWRs at MAPS 1 and 2;*
- *Standard PHWRs from NAPS onwards.*

82. *The task forces reviewed safety of NPPs with a postulated scenario of non-availability of off-site and on-site electric power and water supply sources. The reports of the task forces are summarised in a document titled "Safety Evaluation of Indian NPPs Post-Fukushima Incident" to provide an integrated assessment of strength of Indian NPPs to withstand extreme external events. Report was submitted by the end of March 2011. Over and above, two more task forces were constituted for VVERs, one of which was for VVER, pressurised water reactors (PWR), under construction at Kknpp, and another for 700 MWe PHWRs. Npcil also constituted task forces on safety evaluation of the systems of Kknpp post-Fukushima which gave its interim report on 11-5-2011. The task force found that Kknpp had already incorporated all safety standards, including passive systems to ensure reactor shutdown.*

83. *AERB, in pursuance of the direction of the Prime Minister, constituted a High-Level Committee (Aerbsc-EE) to review safety of NPPs against external events of natural origin (post-Fukushima accident) with national level experts in the areas of (i) design, safety analysis and NPP operation; and (ii) external events in the field of seismology, hydrology and earthquake engineering to carry out a comprehensive review of capability of NPPs to deal with external events within and beyond design basis. The Committee constituted specialist working groups and they reviewed the following major areas:*

- *External events in relation to the safety of NPPs;*
- *Safety of electrical, control and instrumentation systems against external events;*
- *Safety of NPPs under prolonged station black out (SBO) and loss of ultimate heat sink;*
- *Safety of spent fuel storage facilities at NPPs against external*

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events;
• Severe accident management provisions and guidelines (SAMG).

***84**. AERBSC-EE submitted its report on 31-8-2011. AERB has also taken cognizance of self-assessment carried out by Npcil and the site-specific focused regulatory inspections. The Npcil and AERB Report indicates that the overall assessment of safety of Indian NPPs following Fukushima nuclear accident and the actions taken/planned based on the lessons learnt are enumerated in the report. The following aspects were addressed:*

(i) External events
(ii) Design
(iii) Severe accident management and recovery (on site)
(iv) National organisations
(v) Emergency preparedness and response and post-accident manage-ment (off site)
(vi) International cooperation

***85.** The Government of India also submitted a national report in May 2012 on the actions taken for Indian NPPs, subsequent to Fukushima nuclear accident to the Convention on nuclear safety in the Second Extraordinary Meeting of contracting parties, held in August 2012 at Vienna.*

***86.** The Expert Committee of AERB, LWR in its final report dated 31-8-2011 gave 17 safety measures by way of abundant caution. We have directed Npcil to file a status report with respect to the completion date of implementation of all the 17 recommendations made by AERB in Annexure A of the Post-Fukushima AERB Recommendations. A comparative chart giving the status and implementation of the Post-Fukushima AERB Recommendations has been filed as Annexure A by Npcil in its affidavit dated 3-12-2012, which will indicate that twelve recommendations have already been complied with, except the following:*

SL. No.	*Recommendations*	*Status*	*Completion schedule*
	*	*	*
3.	*Mobile self-powered pumping equipment for emergency use.*	*Two fire tenders with diesel operated pump is available at site. To augment the capacity, two additional fire tenders are being procured and made*	*April 2013*

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		available. Chassis has been procured and fabrication of the fire tender is in progress.	
4.	*Facility for monitoring safety parameters using portable power packs.*	*Present design of Kknpp envisages 24-hour battery bank for monitoring parameters and 2-hour battery bank for valve operation during an event of station blackout.* *In order to extend the duration of the monitoring for not less than 7 days, portable DG sets will be connected to the instruments for monitoring safety parameters. One portable DG set is readily available for use at site. Portable measuring devices are also available at site for local monitoring.*	*April 2013*
	*	*	*
6.	*Primary containment to be assessed for ultimate load-bearing capacity (ULBC).*	*Based on design margins available, it has been assessed that for primary containment, ultimate load-bearing capacity (ULBC) is at least 1.5 times design basis accident (DBA) value. Detailed analysis for ultimate load-bearing capacity (ULBC) will be carried out progressively.*	*Long term. Under progress.*

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	*	*	*
8.	*Ensuring that highly active water used for cooling the core-catcher vessel under beyond design basis accident (BDBA) is contained inside the primary containment.*	*The required analysis covering dose estimation, equipment qualification assessment of containing pressure is being carried out.*	*Long term. Under progress.*
	*	*	*
12.	*Adequacy of instrumentation for monitoring plant status during design basis accident (BDBA).*	*All the important parameters of the reactor such as neutron flux, pressure above the core, containment pressure, hydrogen concentration, reactor coolant level, radiation levels in containment, coolant temperatures in hot and cold legs, level of fuel pool, and accumulators, etc. will be monitored during design basis accident (BDBA).* *Please refer Item 4 also.*	*April 2013 (Adequacy of instrumentation ensured.* *Provision to extend power supply to these instruments will be implemented under Item 4 above.)*
	*	*	*
17.	*Provision of additional backup power supply sources for performing essential safety functions, like air cooled diesel generator (DG) located at a high elevation, should be considered.*	*One portable DG set is readily available for use at site.* *Another mobile diesel generator (DG) set is being made available for redundancy.*	*April 2013.*

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> ***87***. *We are convinced that Kknpp design incorporates advanced safety features complying with the current standards of redundancy, reliability, independence and prevention of common cause failures in its safety systems. Design also takes care of anticipated operational occurrences (AOO), design basis accidents (DBA) and beyond design basis accidents (BDBA) like station blackout (SBO), anticipated transients without scram (ATWS), metal water reaction in the water core and provision of core-catcher to take care of core degradation. The design also includes the provisions for withstanding external events like earthquake, tsunami/storm, tidal waves, cyclones, shock waves, aircraft impact on main buildings and fire. The 17 recommendations were made after the Fukushima accident, the cause of which is a natural phenomenon. The facts would indicate that tsunamigenic zone along the east coast of India is more than 1300 km away from the nearest NPP site (Madras/Kalpakkam) and about 1000 km away from Kudankulam. The possibility of hitting tsunami at Kudankulam, as the one that hit Fukushima, seems to be very remote.*
>
> ***94***. *NPCIL had undertaken the task of constructing the two IGW reactors of VVER-1000 Model in collaboration with Atomstroyexport, a wholly-owned Russian Government company. Safety features of NPP as well as the quality requirements for the plant equipment are part of the detailed specifications agreed between the vendor and the purchaser, and as per the quality assurance plan. Npcil, AERB also should ensure that there can be no compromise on the quality of plant equipment, components and other systems.*"

8. The Supreme Court has also noted that the establishment of KNPP was pursuant to an inter-governmental agreement between India and Russia, as per which, its designing was to be done by the Russian Federation, whereas the construction, erection and commissioning was to be carried out by the petitioner.

9. It appears that the Atomic Energy Regulatory Board (**AERB**) had even recommended implementation of seventeen safety measures with respect to the power plant. Units I and II of KKNP were also approved by the Ministry of Environment, Forest and, Climate Change on 09.05.1989 subject to certain conditions. The Supreme Court also issued certain

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directions to ensure proper functioning of KKNP.

10. Learned counsel also submits that pursuant to the impugned order of the CIC, the petitioner communicated the same to 'Atomstroyexport' (Russian Federation), which objected to the publication of the SAR.

11. The Court, therefore, finds that the petitioner holds the SAR in a fiduciary capacity *qua* the Russian Federation. Under Section 8 (1)(e) of the RTI Act, such information is clearly exempt from the scope of the statute. Moreover, considering the Supreme Court decision in ***G. Sundderrajan***, wherein, the safety related concerns have been adequately considered and rejected, there cannot be any larger public interest concerns warranting disclosure of the information.

12. Further, under Section 8(1)(a) of the RTI Act, information the disclosure of which would prejudicially affect the scientific, strategic, and economic interests of the State as also foreign relations with a foreign State. The information sought by the respondent would fall under this category as well.

13. In view of the aforesaid factual and legal position, the impugned directions insofar as they relate to supply of the SAR is concerned, stands set aside.

14. With the aforesaid observations, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

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