

## RELOCATION: NIRMA CEMENT PLANT AT MAHUVA, DIST. BHAVNAGAR (GUJARAT) – A CASE STUDY

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**ABSTRACT:** This paper presents a case of success story of public participation in environmental decision making. The degree of attention being given to expanding ordinary citizens' roles in the policy process has shown its impact in compelling relocation of Nirma Cement Plant from Mahuva. This is a landmark case where a large cap company of the nation has been denied environmental clearance after acquiring land and commencing constructions as a result of public Interest litigation (PIL) filed by local NGO for setting up cement plant on the ground that Environmental Impact Assessment (EIA) has not been done properly. The farmers under the banner of Shree Mahuva Bandhara Khetiwadi Pariyavaran Bachav Samitee had filed public interest litigation (PIL) before Gujarat high court in 2009 protesting against the plant close to Sambhadiyala Bandhara, a water body. The protest was spearheaded by then BJP MLA Dr Kanubhai Kalsaria. The protesters alleged that the proposed plant to manufacture 1.91 million tonnes of cement per annum, with its 50 MW captive power plant and a coke oven plant would put both farm productivity and livelihood of people at stake. Later, the apex court disposed off the appeal filed by farmer's association, which challenged HC order giving a green signal to Nirma plant. Two experts constituted by MoEF have concluded that location of cement plant is part of the water body and that the plant should be relocated. Based on the committee's report, MoEF filed an affidavit in the Supreme Court and the environment clearance given to Nirma Industries to set up a cement plant was revoked. Because the land falls in the eco sensitive wetlands with the neighboring area serving as habitat for Asiatic lions. In the course of events, the Union Ministry of Environment and Forests (MoEF) on December 1, 2011 revoked the Environment Clearance it had granted to Nirma in 2008. The Financial Express dated 15<sup>th</sup> June 2012 reported that the company is learnt to be in talks with Ahmedabad-based Siddhi Vinayak Cement Limited (SVCL) to set up a plant in neighboring Rajasthan.

**Key words :** Environmental Impact Assessment, CRZ clearance, EIA Public Hearing, Ministry of Environment and Forest, Environmental Protection Act, 1986

### 1. INTRODUCTION:

Environmental Impact Assessment (EIA) is an exercise to be carried out before any project or major activity is undertaken to ensure that it will not in any way harm the environment on a short term or long term basis.<sup>1</sup> The aim of the EIA is to assess the overall impact of development project on the environment and measures to be adopted to protect the environment<sup>2</sup> EIA is a preventive exercise in the field of environmental protection which is ecologically benign and economically viable. Moreover, prevention is always better than cure and cheaper than remedy.<sup>3</sup>

The pre eminent report of the World commission on Environment and development (known as Brundtland Commission) recognizes EIA as an essential component in the promotion of sustainable development. The report envisages a greater public participation in decisions that affect the environment

giving communities on effective say over the use of local resources. The report also comments as under:

“When the environmental impact of a proposed project is particularly high, public scrutiny of the case should be mandatory and wherever feasible, the decision should be subject to earlier public approval perhaps by referendum”.<sup>4</sup>

Realizing the importance of the requirement of public participation for EIA, India in its EIA Notification, 2006 made the public participation mandatory for all category- A and category- B, projects (except the activities like roads and highway expansion, modernization of irrigation projects etc).<sup>5</sup>

The responsibility for conducting public hearing lies with state pollution control Board.<sup>5</sup>

**2. PROJECT PROPONENT AND THE DETAILS OF THE PROPOSED PROJECT:**

This project has been proposed by Nirma Ltd., a part of Nirma group engaged in the business of consumer products like soap, detergent and industrial products like sulphuric acid, Oleum, distilled fatty acids, Lineare Alkyl Benzene, Soda Ash (Light & Dense), salt etc. This group came in existence in the year 1980 and since then continuously expanding its wings for increase in production capacities and diversification. It has overall about 14,000 employee base and annual turnover of around Rs.3500 crores.<sup>6</sup>

Nirmal Limited (NL) proposed to set up a cement plant 1.91 million tons per annum (MTPA), 1.5 MTPA clinker), coke oven (capacity 1.5 Lakh TPA) and a captive power plant (capacity 50 MW) at village Padhiarka, 15 km from Taluka headquarters Mahuva in district Bhavnagar of Gujarat. For the Cement project, major raw material is Lime stone which is proposed to be mined out from the captive mines located at Padhiar ka, Doliya, Madhiya, Vangar, Gujarda, Dudheri, and Dudhala villages. Lignite is proposed to be procured locally from Kutch/Bhavnagar. Good quality coal is proposed to be imported from Indonesia. The project will be set up over 280 hectares of land, out of which 170 hectares will be utilized for the cement plant, Captive power plant and provision for future expansion. The balance land will be utilized for upcoming Coke Oven Plant. However 33% of the total project area (i.e.92.6ha.) will be used for Green belt/Canal development.<sup>7</sup>

The Gujarat government allotted 268 ha to the detergent company in Bhavnagar district's Mahuva tehsil to set up a cement plant and mine limestone. Part of the project site is a reservoir, Samadhiyala Bandhara, and its catchment, spread over 100 Ha.

**3. CRITICAL REVIEW OF PUBLIC HEARING AFTER ENVIRONMENTAL CLEARANCE BY CENTRAL GOVERNMENT:**

Nirma Limited had appointed M/s. Min Mec Consultancy Pvt. Limited as its consultant for the preparation of Environmental Impact Assessment and Environmental Management Plan (EIA/EMP). The Techno-Economic Feasibility Report (TEFR) for the project has been prepared by Holtec Consulting Private Limited (HOLTEC).<sup>7</sup>

Public hearing was conducted on 9<sup>th</sup> Sept, 2008 and the environmental clearance was accorded MoEF on 11<sup>th</sup> December 2008. MoEF granted Environmental Clearance to Nirma on December 11, 2008 on the basis of rapid environmental impact assessment (EIA), that describes the project site as wasteland.

Nirma also obtained in-principle approval from the state to mine limestone from 3,460 ha in Mahuva's Padhiarka village to feed the cement plant.

1. Environmental clearance was accorded for cement Plant ( Cement Plant 1.91 MTPA; 1.50 clinker), near village Padhiarka, Taluka Mahuva, District Bhavnagar, Gujarat to M/s. Nirma Limited dated 11<sup>th</sup> December 2008 **subject to stipulation of environmental safeguards;**

2. The EAC took cognizance of the issues raised during the Public Hearing held by the Gujarat Pollution Control Board on 9<sup>th</sup> September 2008 **including the salinity control bund.** In the public hearing proceedings, it was recorded that the company would deepen the salinity control bund area to enhance the water storage capacity by 19% and that three canals would be constructed for smooth flow of incoming water.

3. Subsequent to the issuance of environmental clearance, the local people and NGOs raised certain concerns regarding its adverse impact on water body created subsequent to the construction of Bandhara in the year 2000. The environmental clearance was challenged in the Hon'ble High Court of Gujarat. Subsequently, Special Leave Petitions have been filed in the Hon'ble Supreme Court of India.

4. On 10<sup>th</sup> February, 2011, the Expert Committee submitted its report to the MoEF after inspection of the project site, which did not support the statements made by M/s. Nirma Limited during public hearing.

5. It was surmised that these measures would allay all fears regarding salinity, the state of the land-wet or waste – having no bearing on the issue. Environment clearance was accorded on this basis. The EAC does not normally approve diversion of wetland for accommodating industries.

6. The apex court disposed off the appeal filed by farmer's association, which challenged HC order giving a green signal to Nirma plant. Two experts constituted by MoEF have concluded that location of cement plant is part of the a water body and that the plant should be relocated. Based on the committee's report, MoEF filed an affidavit in the Supreme Court and the environment clearance given to Nirma Industries to set up a cement plant was revoked.

7. The counsel for Nirma requested the Supreme Court that they would approach the Green Tribunal against the finding of the EC report. The chronological events are presented in Table-1

**Table -1 The Chronology of the consequent event is as under:<sup>8</sup>**

September 2008	Mahuva residents oppose cement plant on their water body at a public hearing.
December 2008	Environment Ministry grant clearance on basis of rapid environmental impact assessment report, which describes the

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	project site as wasteland.
March 2009	People's front moves to Gujarat High Court.
August 2009	Based on a high powered committee report, a ministerial subcommittee recommends allowing the project, directs Nirma to return 54 hectare of acquired land and increase reservoir's capacity to offset water loss. High court accepts decision.
March 2010	High court stays construction after petitioners submit satellite images of wetland. But, allows it within a month asking Nirma to surrender additional 46 hectare.
May 2010	Petitioners move Supreme Court
January 2011	SC asks ministry to respond. It seeks time and sets up an expert committee under CK Varshney to inspect the site.
March 2011	Based on Varshney report, ministry issues stop work order. Nirma moves to high court, which turn down its appeal against ministry's order. Following SC's order ministry forms another expert committee under CR Babu.
May 2011	CR Babu committee submits its report recommending relocation of the plant as it is on wetland. Ministry issues show cause notice to Nirma.
September 2011	SC asks Nirma to prove that the project site is a wasteland : gives 3 months to respond to ministry's show cause notice.
December 2011	Ministry scraps environmental clearance granted to the cement plant. SC dismisses the petition after Nirma submits that it will appeal against ministry's order in the National Green Tribunal.

**3. CRITICAL ANALYSIS:**

After investing almost Rs 150 crores Nirma was denied and revoked the environmental clearance on account of public hearing. The court heard Nirma's petition, challenging the stop-work notice issued by MoEF, after environmentalists raised concerns under the Environmental (Protection) Act, 1986 This is thus successful benchmarking case of public consultation wherein 4000 farmers interest is protected.

The expert committee's report was placed before the court- a bench headed by Chief Justice SH Kapadia by the Ministry of Environment and Forest (MoEF), which also filed an affidavit supporting the findings of the expert committee. The bench sought response from Nirma whether it would like to challenge -- in the apex court or before the newly constituted Green Tribunal -- the findings of the committee, which also

said that the plant was preventing the salinity from sea water in the coastal area.

The committee, which was headed by CR Babu, professor emeritus and former Pro-Vice Chancellor of University of Delhi, has recommended relocation of the plant saying following aspects of environmental engineering :

1. It would "bring changes in the ecology of the water body". It said that any location of such heavy polluting cement factory, based on coal thermal power plant and coke oven plant, would generate emissions and effluents that would damage the ecology and lead to reduction of crops in the area.

2. The committee further said that the nearby Mahuva Taluka harbours Asiatic lions and have been spotted in and around the water-body area.

"In fact, there is a reserve forest within 10 km radius of the site. Two critically endangered vulture species and many other globally threatened bird species are seen around Bandhara," said the report, which was accepted by the MoEF.

In conclusion, the report said, "The committee unanimously recommends that the site of the cement plant industrial complex of Nirma be relocated elsewhere outside Samadhiala Bandhara".

The court was hearing Nirma's petition, challenging the stop-work notice issued by MoEF, after environmentalists raised concerns.

Earlier, the apex court had ordered a fresh environmental study of the area where chemicals maker Nirma is setting up the cement plant. The bench had directed the Expert Appraisal Committee (EAC) of MoEF to study whether the plant was in the wetland area or water bodies. The apex court had directed the committee to call reports from a body of experts with five scientists, who should visit the site.

The court asked the expert body to give hearing to all parties, including Nirma, and the residents near the site and ascertain its impact on environment degradation. Nirma, before approaching the apex court, had moved the Gujarat High Court but it could not get any relief.

Nirma had contended that the company was working for past three years on the project based on previous clearances. The company said that some local politicians were creating the problems.

**4. CONCLUSIONS:**

From the critical analysis and evaluation of this case study, following conclusions as regards Public hearing can be drawn:

**1. Manifestation of expectations of stakeholders in Public hearing process**

The conflict over the thermal project is originated and got manifested through the public consultation mechanism in overall project decision making process. The expectations among the different stakeholders in public hearing are different.

**2. Negligence of regulatory agency in Public Hearing led to social mobilizations:**

In the present case, legal provision of the public consultation in large thermal plant project has proved to take into account the voice of the people opening up procedural window through public hearing. Because the regulatory agency had not shown any obligation to follow the recommendations of the public expressed in the public hearing, there was a social mobilization by different civil society organizations, semi-practical mass organizations. Consequently, the scope of conflict was expanded leading to legal discourse through PIL in High Court and Supreme Court. The environmental clearance order issued by MoEF ultimately revoked based on the environment report submitted by experts after inspection of the site falsifying report of environment appraisal certificate.

**3. 'Public' in Public Hearing did not find the decision of MoEF as just and fair.**

In accordance with the Notification, the public consultation through public hearing had taken place. The environmental clearance was also granted by the competent authority. Thus from a legal and administrative point of view the procedures as mandated by Notifications were complied with. But the public consultation was not found to be legitimate. It was not accepted by the people to be just and fair. The unclear EIA report, incorrect environmental baseline data and violation of environmental clearance norms but still managing to

get an environmental clearance accentuated the mistrust overtime resulting the agitation and ultimately forcing the authority to revoke the order.

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