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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2066/2014 & CM APPL. 4326/2014

MARUTI SUZUKI INDIA LTD Petitioner

Through Mr. Mukul Rohatgi, Senior Advocate
with Ms. Ruchi A. Mahajan,
Ms. Shanta C. and Mr. Nikhil
Rohatgi, Advocates

versus

THE MINISTRY OF ENVIRONMENT
AND FORESTS & ORS

..... Respondents

Through Mr. Rajeeve Mehra, ASG with
Mr. Sachin Datta, CGSC and
Mr. Rajiv Ranjan Mishra, Advocate
for R-1.
Mr. Manjeet Singh, Addl AG with
Ms. Nupur Chaudhary, Advocate for
R-2.

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Date of Decision : 26th May, 2014**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. Present writ petition has been filed by the petitioner-Maruti Suzuki India Ltd. with the following prayers:-

"(i) Issue a writ or order or direction in the nature of mandamus to Respondent No.1 ordering the Respondent No.1 to act on the Representations of the Petitioner (Given as ANNEXURE P-1 and

dated 28 January 2014 and ANNEXURE P-2 dated 25 February 2014) without any delay;

(ii) Issue a writ or order or direction in the nature of mandamus directing Respondent No.1 and 2 to adopt a clarification that is harmonious with the dominant purpose of the Schedule to the EIA Notification 2006 inasmuch as the prescription of the area thresholds given in Items 8(a) and (b) of the Schedule to the EIA Notification 2006 cannot be extended to any and all activities and projects;

(iii) Issue a writ or order or direction in the nature of certiorari to Respondent No.2 quashing the Impugned Directions of the Respondent No.2 (Given as ANNEXURE P-3 and dated 28th February 2014).

(iv) Issue a writ of mandamus or any other writ or order or direction restraining the Respondent No.2 from issuing any further orders or directions with respect to the Petitioner's projects or activities (Given in Paragraph 3) pending further clarifications from Respondent No.1.

(v) Grant any ad interim ex-parte reliefs in the aforementioned terms; and

(vi) Issue any other appropriate writ, order or directions as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

2. The relevant facts are that petitioner is engaged in the activity of automobile manufacturing and has various projects throughout India.

3. Respondent No.1 is the Ministry of Environment & Forests of the Government of India and is responsible for the promulgation and implementation of the Environmental Impact Assessment Notification (S.O. 1533) dated 14th September, 2006 ('EIA Notification 2006').

4. Respondent No.2 is the Haryana State Environment Impact Assessment Authority which is an authority constituted by the respondent

No.1 in exercise of its powers under Section 3(3) of the Environment (Protection) Act, 1986 and the EIA Notification 2006 by respondent No.1's Notification S.O. 899 (2) (E) dated 21st April, 2008 (and amended and superseded by respondent No.1's Notifications S.O.568(E) dated 23rd March, 2012 and S.O. 937 (E) dated 05th April, 2013).

5. Respondent No.2 is also a delegate of respondent No.1 and is responsible for the grant of prior Environmental Clearance (for short 'EC') in the State of Haryana for Category 'B' projects and activities as listed in the Schedule to the EIA Notification 2006 promulgated by respondent No.1.

6. Respondent No.3 is the Haryana State Expert Appraisal Committee which has been constituted by the respondent No.1 (in consultation with the Government of Haryana) in exercise of its powers under Section 3(3) of the Environment (Protection) Act, 1986 and the EIA Notification 2006 by respondent No.1's Notification S.O. 899(2)(E) dated 21st April, 2008 (and amended and superseded by respondent No.1's Notification S.O. 568(E) dated 23rd March, 2012). Respondent No.3 functions under the supervision and directions of the respondent No.2, which in turn, is a delegate of the respondent No.1. Respondent No.3 assists in the functioning of respondent No.2 and is responsible for making recommendations to the respondent No.2 regarding the grant of EC for Category 'B' projects and activities.

7. Mr. Mukul Rohtagi, learned senior counsel for petitioner submits that in accordance with the EIA Notification 2006, only those projects and activities, clearly and specifically listed in the Schedule to the EIA Notification 2006 require EC. According to him, projects and activities not listed in the Schedule are exempted from its regulatory ambit. The petitioner contends that though the petitioner's activity was specifically

included in the Draft Environmental Impact Assessment Notification S.O. 1324(E) dated 15th September, 2005, yet it was omitted from the Schedule to the EIA Notification 2006. He contends that this omission clearly suggests that petitioner's activity would not be covered by the EIA Notification 2006.

8. Mr. Rohatgi points out that even the Supreme Court in ***Re: Construction of Park at NOIDA near Okhla Bird Sanctuary***, reported in ***(2011) 1 SCC 744*** had commented on the ambiguity in the Notification and observed that *"The projects/activities under items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness"* confusion in fact, continues to remain unattended to by respondent No.1.

9. Mr. Rohatgi states that in any event, the petitioner has been obtaining the requisite environmental clearances and approvals such as Consents to Establish and the Consents to Operate under the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 from the Haryana State Pollution Control Board (for short 'HSPCB') for its various projects.

10. Mr. Rohatgi further states that the petitioner has now without prejudice to its rights and contentions sought EC after the formation of such view by respondent No.2. He, however, states that the petitioner despite a 'without prejudice' application of EC dated 14th February, 2013 for the petitioner's project at Rohtak is being sought to be prosecuted under Sections 15 and 19 of the Environment (Protection) Act, 1986 for failure to

obtain prior EC. In this regard, he refers to the Minutes of the 67th Meeting of the respondent No.2 dated 28th February, 2014 and 01st March, 2014 where the respondent No.2 has in Item 14 of the minutes of the abovementioned meeting ordered:-

".....[1] The Principal Secretary, Environment may be requested to initiate credible action on the violation by invoking powers under Section 19 of the Environment Protection Act, 1986 for taking necessary legal action under Section 15 of the EP Act for the period for which the violation has taken place, against MSIL, EMG Department, Palam Gurgaon Road, Gurgaon, Haryana for commencing construction of "Industrial Building for testing of Vehicles" at Plot No.1, Section 33-B, 33-C IMT, Rohtak, Maruti Suzuki India Limited Rohtak without obtaining prior EC under the EIA Notification. The Principal Secretary, Environment may also be requested to provide the evidence of credible action taken against the project proponent.

[2] The matter relating to the violation shall be put by the project proponent to the Board of Directors of MSIL for consideration of its environmental related policy/plan of action as also a written commitment in the form of a formal resolution to be submitted to the SEIAA within a period of 60 days of the date of this letter ensuring that the violations will not be repeated; failing which it will be presumed the project proponent is not interested in pursuing the project further and the project file will be closed..."

11. However, Mr. Rajeeve Mehra, learned ASG who appears for respondent No. 1 states that respondent No.2 relies upon clarification dated 21st October, 2009 on the subject matter of "Environmental Clearance to Special Economic Zone (SEZ) Projects- Reg." issued by the respondent No.1 to contend that in case the built-up area of a project or activity is $\geq$ 20,000 sq. mts., then irrespective of the nature of the project or activity, the project or activity would require EC under Item 8(a) and 8(b) of the Schedule to the EIA Notification 2006 i.e. "Building and Construction

Projects" and "Township and Area Development Projects".

12. Mr. Manjeet Singh, Additional AG for respondent No. 2 states that though the said respondent has raised preliminary objection to the maintainability of the present writ petition, yet it supports an amicable resolution of the disputes. He states that if the legality and validity of the EIA Notification 2006 is upheld and the petitioner as well as its directors undertake that the petitioner shall obtain ex-post facto EC and comply with the terms and conditions stipulated in the EC as well as further undertake to obtain EC for all their future projects in Haryana, the said respondent would consider not initiating any criminal action against the petitioner and/or its board members/officials for not procuring prior EC with regard to the present project being executed by the petitioner in the State of Haryana.

13. In rejoinder, the petitioner submits that the circular clearly pertains to SEZs and does not in any way, support the respondent No.2's view that all projects and activities having a built-up area of $\geq$ 20,000 sq. mts., irrespective of the nature of the project or activity, would require EC.

14. Having heard learned counsel for parties, this Court is of the view that the EIA Notification 2006 applies to all projects with a built up area of $\geq$ 20,000 sq. mts. irrespective of the nature of the project or activity. Omission of some words/expressions from the draft EIA Notification 2006, which are superfluous, would not assist the petitioners. Moreover, deletion of words/expressions from a draft Notification is not equivalent to a deletion of words/expressions from an existing statute or Notification. Also internal notings of Government officials cannot be a guide to interpretation when the Notification is otherwise free from ambiguity.

15. However, in the present case, petitioner cannot be said to have acted with malafide intent in not applying for prior EC as firstly there was no authoritative judgment on the said issue and secondly, upon the petitioner being asked to seek prior EC, despite its bonafide belief that EIA Notification 2006 was not applicable to its projects, did in fact apply for EC in compliance with HSPCB direction for its projects in Haryana as far back as 14th February, 2013, i.e., prior to filing of the present writ petition.

16. In any event, Mr. Mukul Rohatgi, learned senior counsel for petitioner undertakes that petitioner shall obtain *ex post facto* EC and comply with all terms and conditions stipulated by the EC as well as obtain necessary EC for all its future projects in Haryana. The statement made by Mr. Mukul Rohatgi is accepted by this Court and petitioner as well as its Board of Directors are held bound by the same. Accordingly, this Court is of the view that the ends of justice would be met in the present instance by directing respondent No.2 to consider petitioner's application for grant of *ex post facto* EC for its projects in Haryana.

17. Also, upon perusal of the paper book, it transpires that in the 29th Meeting of the State Environment Impact Assessment Authority, Haryana held on 2nd July, 2010 under similar facts and circumstances respondent No. 2 itself was of the view that no prosecution under Sections 15 and 19 of the Environment (Protection) Act, 1986 be initiated. The relevant portion of the Item No. 10 of the Minutes of aforementioned meeting reads as under:-

“The SEAC has considered this case and appointed a Sub-Committee also which did not recommend the prosecution in view of the circumstances of the case. The SEAC accordingly agreeing with the report of the Sub-Committee did not recommend any prosecution in this case.”

18. Consequently, the respondents are directed not to initiate any criminal action against the petitioner and/or its Board Member/officials. This Court once again reiterates that present order has been passed on the peculiar facts and circumstances of this case and the same shall not be treated as a precedent. With the aforesaid observations, present writ petition and application are disposed of.

Order dasti.

MANMOHAN, J

MAY 26, 2014

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