

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.5720 OF 2018

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the petitioner, learned Government Pleader for Forests and Sri G. Ramachandra Rao, learned Standing Counsel for the A.P Pollution Control Board and, with their consent, the Writ Petition is disposed of at the stage of admission.

The relief sought for in this Writ Petition is to declare the proceedings of the A.P. State Environment Impact Assessment Authority, Visakhapatnam, in not considering the petitioner's case for grant of "environmental clearance", and in insisting upon an "in principle permission letter" from the A.P. State Pollution Control Board, as arbitrary, illegal and *ultra vires* the provisions of the Environment (Protection) Act, 1986 (for short, "the Act"), the Environmental Impact Assessment Notification, 2006, and the revised guidelines for Common Bio-medical Waste Treatment and Disposal Facilities.

While several other reliefs are sought for in the Writ Petition, Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the petitioner, would confine his submissions only to aforesaid prayer, and contend that, in terms of the notification dated 14.09.2006 issued under Rule 5(3) of the Environment (Protection) Rules, 1986 (for short, "the Rules"), the State Level

Environment Impact Assessment Authority is required to consider the petitioner's application for grant of prior environmental clearance; approval of the State Pollution Control Board is required only when the unit is to be established and not prior thereto; and the 5th respondent erred in directing the petitioner to obtain an "in principle permission letter" from the A.P. State Pollution Control Board.

While para 3 of the notification dated 14.09.2006 provides for establishment of a State Level Impact Assessment Authority, para 7 prescribes the manner in which application, for grant of permission for environmental clearance, is to be processed. Sri G. Ramachandra Rao, learned Standing Counsel for the A.P. Pollution Control Board would draw our attention to the Bio – Medical Waste Treatment Rules, 2016 (for short, "the 2016 Rules"), which were notified in the Gazette of India on 28.03.2016, to submit that, for site clearance, the State Pollution Control Board is required to be consulted; and, consequently, the 5th respondent was justified in directing the petitioner to obtain "in principle" consent of the State Pollution Control Board with regards the site identified for location of the Bio-Medical Waste Treatment Facility.

The 2016 Rules were made in the exercise of the powers conferred by Sections 6, 8 and 25 of the Act, and in super-session of the Bio-Medical Waste Management Rules, 1998. Rule 17 of the 2016 Rules relates to site for common bio-medical waste treatment and disposal facility and, under Sub Rule (2), thereof, selection of site for setting up of such facility shall be made in consultation with the prescribed authority, other stakeholders, and in

accordance with guidelines published either by the Ministry of Environment, Forest and Climate Change or the Central Pollution Control Board. Rule 3(o) of the 2016 Rules defines the “prescribed authority” to mean the State Pollution Control Board in respect of a State. Rule 17(2) of the 2016 Rules requires the State Pollution Control Board to be consulted in the selection of a site for setting up a Bio-medical Waste Management Facility; and, with regards location of the site, the State Pollution Control Board is required to act in accordance with the guidelines published either by the Ministry of Environment and Forest or the Central Pollution Control Board.

The National Green Tribunal, Southern Bench, in its order dated 26.5.2017, had directed the State Environment Impact Assessment Authority to pass appropriate orders in respect of grant of environmental clearance. The 5th respondent had, in turn, directed the petitioner to obtain “in principle” approval of the State Pollution Control Board. The only provision which requires the State Pollution Control Board to be consulted at this stage is Rule 17(2) of the 2016 Rules which relates to the location of the site for the facility. As Rule 17(2) requires the State Pollution Control Board to be consulted with regards location of the site, and for the Board to act as per the guidelines framed either by the Ministry of Environment, Forest and Climate Change or Central Pollution Control Board, Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the petitioner, would submit that, though the petitioner had earlier made an application, seeking consent of the State Pollution Control Board on 25.5.2015, they

would, in order to avoid further delay, make an application afresh within one week from today.

We consider it appropriate, in such circumstances, to direct the A.P. State Pollution Control Board to examine the petitioner's request for their grant of consent, to establish a unit at the identified site, in accordance with the guidelines framed either by the Ministry of Environment, Forest and Climate Change or the Central Pollution Control Board, and communicate their opinion to the petitioner within two weeks from the date of receipt of their application. It is made clear that the views expressed by the Board would relate only to the site, where the unit is sought to be located, in terms of Rule 17(2) of the 2016 Rules, and shall not be construed either as grant of, or refusal to grant, consent for establishment of the unit as it is only if, and after, the State Level Impact Assessment Authority gives its approval for prior environmental clearance, would the question of grant of consent for establishment arise.

The Writ Petition is, accordingly, disposed of. No order as to costs. Miscellaneous Petitions, if any pending in this Writ Petition shall also stand closed.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

07th March, 2018
Gk

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

48

WRIT PETITION No.5720 OF 2018



Gk