

30.06.2022
Sayandeep
Item No. 04
Ct. No. 05

W.P.A. 11523 of 2022

Pacific Scientific Consultancy

Private Limited and Others

Versus

The State of West Bengal and Others.

Mr. Kalyan Bandyopadhyay,

Mr. Durga Prasad Dutta,

Mr. Souvik Sen,

Mr. Sumanta Ganguly.

... for the petitioners.

Mr. T.M. Siddique,

Mr. Prantik Gorai.

...for the State.

1. The petitioners are aggrieved by a decision dated 14th June, 2022 contained in a Minutes of a Meeting of The State Environment Impact Assessment Authority (SEIAA) deferring the application of the petitioner no. 1 for Environmental Clearance. The petitioner had applied as a Project Proponent (PP) for a project in consonance with the business carried on by the petitioner no. 1 of consultancy on energy safety audit, ecological study, bio monitoring and solid waste management and environment-related study and research.

2. The reason given for deferment of the petitioner's application is two-fold: i) the petitioner (described as PP in the impugned order) did not submit the conversion certificate; ii) A stay granted by the Calcutta High Court on 28th April, 2016 is no longer operative. The petitioners are particularly aggrieved by the second reason given by the SEIAA for deferring the petitioner's application. The essence of the second ground for deferment is that the petitioners must furnish a National Accreditation Board of Education and Training (NABET) accreditation for acting as consultant for any project submitted for environmental clearance. The PP / petitioners were therefore requested to engage a NABET accredited Environmental Consultant Organization for the project.

3. According to learned counsel appearing for the petitioners, the construction given by SEIAA to the order of the Supreme Court dated 15th October, 2020 in Criminal Appeal No. 1375 of 2013 is patently wrong. Counsel places other orders passed by the Gujarat and Karnataka High Courts by which the relevant office Memoranda and Notifications requiring NABET accreditation were stayed by the High Courts. Counsel also places relevant provisions from the Constitution of India in this regard.

4. Learned counsel appearing for the State respondents places an order of the Supreme Court in Criminal Appeal Nos. 1375 – 1376 of 2013 passed on 15th October, 2020 to submit that the earlier order dated 28th March, 2018 in the same Criminal Appeal has been continued.

5. The submissions of learned counsel appearing for the parties indicate that the controversy revolves around interpretation of the orders of the High Courts in relation to the impugned Office Memoranda/ Notifications requiring NABET accreditation for acting as consultant for any project for environmental clearance and the order passed by the Supreme Court on 15th October, 2020. To put the order in context, several notifications and Office Memoranda were issued by the Ministry of Environment and Forests including on 2nd December, 2009, 18th March, 2010, 28th May, 2010, 28th June, 2010, 1st November, 2010, 31st December, 2010, 30th June, 2011 and 30th September, 2011 with regard to NABET accreditation for all organisations working in the area of Environmental Impact Assessment.

6. A Division Bench of the Gujarat High Court passed an interim order staying the operation of all the impugned Memoranda for a limited period of time. A similar order was passed by a learned judge

of the Calcutta High Court in W.P. No. 13896 (W) of 2012 on 19th September, 2012. The Karnataka High Court also passed an order dated 10th April, 2012 continuing an earlier interim order passed by the Court on 18th January, 2012. Since the proceedings before the different High Courts involved the same set of office Memoranda, the writ petitions were sought to be transferred to the Supreme Court. The transfer petitions were dismissed by an order of the Supreme Court dated 9th April, 2018.

7. An additional paragraph was added to the earlier Memoranda by way of a Notification dated 3rd March, 2016 of the Ministry of Environment, Forest and Climate Change. The said paragraph – no. 13 – empowered the NABET or Quality Council of India or any other agency as notified by the Ministry to prepare the Environmental Impact Assessment Report and to appear before the concerned Expert Appraisal Committee for environmental clearance.

8. This Notification of 3rd March, 2016 was stayed by a Division Bench of the Gujarat High Court on 5th April 2016. The order of stay was continued by a recent order of the Division Bench of the Gujarat High Court on 27th April, 2022. A challenge to the Notification dated 3rd March, 2016 was also brought before a learned Single Judge of this Court in W.P. 7365(W) of 2016. By an order dated 28th April, 2016

the Court, considering the interim orders passed by the Gujarat High Court, held that the petitioners were sufficiently protected since the Gujarat High Court, order was in general terms. The Court also gave liberty to the petitioners to seek interim orders in the event the Gujarat High Court order is vacated.

9. This order dated 28th April, 2016 has been referred to in the impugned decision of the SEIAA wherein the Authority has held that the protection given to the petitioner no longer subsists in view of the order passed by the Supreme Court on 15th October, 2020.

10. The order of the Supreme Court must therefore be seen in context of the construction given by the SEIAA. The order dated 15th October, 2020 passed in Criminal Appeal No. 1375-1376 of 2013 refers to an earlier judgment passed in the same set of Criminal Appeals and reported in *Asian Resurfacing of Road Agency Private Limited vs Central Bureau of Investigation; (2018) 16 SCC 299*. In paragraphs 36 and 37 of the said judgment, the Supreme Court deprecated the frequency and duration of orders of stay granted by the Courts in civil and criminal proceedings. The Supreme Court commented on the practice of proceedings being adjourned *sine die* on account of stay and attempted to remedy the situation by directing that in all pending cases where

stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from the date of the judgment of the Supreme Court. The Supreme Court also directed that extension of such orders can only be granted by a speaking order showing exceptional nature of the case. This judgment was continued by the order dated 15th October, 2020 where the Supreme Court cautioned Magistrates all over the country to follow the earlier order in letter and spirit and to set a date for the trial.

11. As of today, the Office Memoranda and the Notification of 3rd March, 2016 remain stayed. The order of stay by the Gujarat High Court was continued on 5th April, 2016 till further orders including the order dated 27th April, 2022. The matter has now been fixed on 11th July, 2022. If this be the case, the interim order of stay granted by a learned judge of this court on 28th April, 2016 in an earlier writ petition filed by the petitioners also subsists as on date. According to the SEIAA, these interim orders granting stay of the impugned Notifications have ceased to remain operative by reason of the Supreme Court judgment in *Asian Resurfacing* followed by the order of 15th October, 2020 passed in the same Criminal Appeal.

12. This Court is not inclined to accept the construction given by SEIAA to the effect of the Supreme Court order for the following reasons. First, *Asian Resurfacing* was passed in a batch of Criminal Appeals where the Supreme Court was concerned with the prevalent situation of proceeding remaining pending for an indefinite period of time by reason of orders of stay granted by the High Courts. The concern arose out of the pendency of corruption cases where civil and criminal proceedings were stalled and adjourned for an indefinite period of time by reason of orders of stay. It was in these kinds of cases that the Supreme Court thought it fit to direct that stay orders would have a limited shelf-life. Paragraphs 36 and 37 of *Asian Resurfacing* would make this clear where the Supreme Court also commented on legislative policy of ensuring expeditious disposing of a trial without hampering the same in any manner. The paragraphs entirely deal with the detrimental effect of a stay order in framing of charge or where the trial itself in civil or criminal proceedings is interfered with. The focus of the Supreme Court was on the Prevention of Corruption Act, 1988 and the recommendations made to the said Act for speedy disposal of a trial. The consequent direction of the Supreme Court in all the pending cases for restricting the duration of a stay order to a limit of six months must hence be

seen in the particular facts of *Asian Resurfacing*. The order of 15th October, 2020 was passed in the same set of Criminal Appeals and only continued the earlier order passed by the Supreme Court on 28th March, 2018 which has been discussed above.

13. Second, stay of trial of civil or criminal proceedings cannot be equated with stay of Office Memoranda/Notifications. Apart from the obvious differences, the orders of the Supreme Court were in specific relation to pending civil and criminal proceedings which were stalled due to the orders of stay. In the present case, the impugned Notification was stayed by the High Courts of different States and there is no material on record to indicate that the aggrieved party took any steps from January, 2013 onwards.

14. Third, Article 226(3) of the Constitution provides for a remedy to a litigant who is at the receiving end of an interim order or injunction or stay to make an application to the High Court for vacating such order. Article 226 (3)(b) further mandates that the High Court shall dispose of such applications within a period of 2 weeks from the date on which it is received or from the date on which the copy of such application is furnished, whichever is later. The aforesaid provision hence acts as a safeguard against indefinite continuation of *ex-parte*

interim orders as also the designated route which an aggrieved party can take recourse to. Admittedly, the respondents or the concerned Ministry have not taken recourse to this provision or by way of any application before the High Courts for vacating the orders of stay. The SEIAA therefore, giving such benefit to the respondents or the Ministry by a construction of the orders of the Supreme Court is totally out of context. The reasons shown in the impugned decision of the orders of stay against the Notifications not subsisting any longer is hence without any basis. This Court is accordingly inclined to accept the stand taken on behalf of the petitioners.

15. It may also be mentioned that the document of 27th February, 2012 of the NABET issued to the petitioner no. 1 shows that the petitioner has been given conditional accreditation as indicated in the contents of the document. The accreditation was given for a period of 3 years starting from 21st August, 2011. It is not clear whether this accreditation was renewed after 2014.

16. Notwithstanding the above document or the fact of renewal, this Court is of the view that the deferment of the application made by the 1st petitioner for the reasons contained in the impugned Minutes dated 14th June, 2022 has no factual or

legal basis and hence cannot be sustained. The impugned decision is accordingly quashed and the State Environment Impact Assessment Authority is directed to consider the petitioner's application afresh and come to a reasoned order within a period of 6 weeks from the date of communication of this order.

17. WPA 11523 of 2022 is disposed of in terms of the above.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)