IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2022

DATE OF DECISION : 14.12.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.467 of 2022

Isha Foundation
rep.by its Authorised Signatory
C.R.Dinesh Raja
Having office at Isha Yoga Center
Vellangiri Foothills
Ishana Vihar (PO)
Coimbatore 641 114 .. Petitioner

v.

1. Union of India
represented by Secretary to Government
Ministry of Environment, Forest and
Climate Change
Indira Paryavaran Bhawan
Jorbagh Road
New Delhi 110 003

2. State of Tamil Nadu
represented by its Principal Secretary to Government
Department of Environment
Secretariat, Fort St.George
Chennai 600 009

3. Tamil Nadu Pollution Control Board
represented by its Chairman
No.76, Anna Salai, Guindy
Chennai 600 032

4. The District Environmental Engineer
Tamil Nadu Pollution Control Board
Coimbatore (South)
Plot No.E-55A, SIDCO Industrial Estate
Pollachi Main Road, Kurichi
Coimbatore-641 021

5. State Level Environmental Impact
Assessment Authority
Department of Environment
No.1, Jeenis Road
Panagal Maligai, Ground Floor
Saidapet, Chennai 600 015 .. Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a

(a) Writ of Declaration that the EIA Notification dated 22.12.2014 bearing S.O.3252(E) issued by the 1st Respondent (Impugned Notification) under Section 6 of the Environment Protection Act, 1986 read with Rule 5(3) of the Environment Protection Rules, 1986 in so far as it creates an unreasonable classification between persons who constructed buildings prior to 22.12.2014 and after 22.12.2014 as arbitrary and ultra vires the Constitution and strike down the same as illegal, unconstitutional and consequently declare that the petitioner is entitled to the exemption granted under the EIA Notification 2014 is applicable with effect from the commencement of the EIA Notification dated 14.09.2006 bearing S.O.1533(E) issued by the 1st Respondent.

(b) a Writ of Certiorari calling for all the records pertaining to the proceedings of the 4th Respondent in Proc.No.DEE/TNPCS/CBS/F.CBS-NA/R/L/EC/2021 Dated 19.11.2021 and quash the same as illegal.

(Prayer amended vide order of Court dated 09.11.2022 made in W.M.P. No.25090 of 2022 in W.P.No.467 of 2022)

For Petitioner	::	Mr.Sathish Parasaran Senior Counsel for Mr.K.Gowtham Kumar
For Respondents	::	Mr.R.Sankaranarayanan Additional Solicitor General assisted by Mr.K.Srinivasamurthy Senior Panel Counsel for R1
		Mr.R.Shunmugasundaram Advocate General assisted by Ms.Shanmugavalli Sekar Standing Counsel and Ms.A.G.Shakeenaa for R3 & R4
		Mr.J.Ravindran Additional Advocate General assisted by Dr.T.Seenivasan Special Government Pleader for R2

Mr.A.Yogeshwaran
for the proposed respondent

Mr.S.Muralidharan
Party-in-Person for the
proposed respondent

ORDER

The Hon'ble Acting Chief Justice

Isha Foundation, Coimbatore has filed this writ petition seeking the following prayer, as amended by the order of Court dated 09.11.2022:-

(a) Writ of Declaration that the EIA Notification dated 22.12.2014 bearing S.O.3252(E) issued by the 1st Respondent (Impugned Notification) under Section 6 of the Environment Protection Act, 1986 read with Rule 5(3) of the Environment Protection Rules, 1986 in so far as it creates an unreasonable classification between persons who constructed buildings prior to 22.12.2014 and after 22.12.2014 as arbitrary and ultra vires the Constitution and strike down the same as illegal, unconstitutional and consequently declare that the petitioner is entitled to the exemption granted under the EIA Notification 2014 is applicable with effect from the commencement of the EIA Notification dated 14.09.2006 bearing S.O.1533(E) issued by the first 1st Respondent.

(b) a Writ of Certiorari calling for all the records pertaining to the proceedings of the 4th Respondent in Proc.No.DEE/TNPCS/CBS/F.CBS-NA/R/L/EC/2021 Dated 19.11.2021 and quash the same as illegal.

2. Mr.Sathish Parasaran, learned Senior Counsel appearing for the petitioner submitted that the petitioner is a volunteer-run registered pubilc charitable trust founded in the year 1992 with aims to bring the physical, mental and spiritual wellbeing for everyone. It is also a non-profit yoga educational organisation associated with several projects like greenhands, action of rural rejuvenation, isha vidya, rally for rivers etc. The petitioner also received the Indira Gandhi Paryavaran Puraskar in the year 2010 for undertaking activities including conducting classes and training on agroforestry to farmers, plant nurseries in schools and tree planting in urban centres. The petitioner also had set up the Isha Yoga Center in the year 1994 to run a group of educational institutions, offering variety of courses such as Yoga, Classical Arts and Sanskrit through a Gurukula format and the educational institution being affiliated to the ICSE Board. The petitioner

established the Isha Yoga Centre with buildings organically covering 48.3 hectares of 1,25,849 sq.m. built up area from the year 1994 onwards near Coimbatore, Tamil Nadu, out of which an extent of 28,279 sq.m. of land had been used for construction even before the Environment Impact Assessment Notification, 2006 came into force and thereafter, an extent of 91,519 sqm was constructed between the years 2006 and 2012. Adding further, the learned Senior Counsel submitted that the Isha Yoga Centre has been created for the well being of the society and all the buildings at the Isha Yoga Centre are primarily used for educational purposes. It is also the claim of the petitioner that the petitioner has been accredited by the Ministry of Home Affairs to conduct yoga programs under which student visas are issued to students from multiple countries, because the petitioner is working in collaboration with the Ministry of Ayush, Government of India for conducting various yoga programs. Besides, Isha Home School, a residential school under the ICSE Board, it is also running Isha Hatha Yoga School by providing certificate courses for the students from 60+ countries to each hatha yoga across the world.

3. While so, the petitioner made an application for grant of necessary approvals and the Director of Town and Country Planning granted a conditional approval on 03.05.2017 to the building plan on condition that the petitioner shall not commence any activity, excepting fencing of the site and construction of temporary shed for guard, without obtaining environmental clearance under the EIA Notification 2006 from the State Level Environmental Impact Assessment Authority, the fifth respondent herein. Therefore, the petitioner applied for environmental clearance under category 8(a) of the EIA Notification dated 14.09.2006 and the same was submitted to the fifth respondent. Besides, the petitioner also applied for environmental clearance under S.O.804(E) dated 14.03.2017 read with S.O.1030(E) dated 08.03.2018 issued by the first respondent, which prescribed a detailed procedure to obtain environmental clearance for the projects that were already commenced without clearance under the EIA Notification 2006.

4. Arguing further, the learned Senior Counsel submitted that the first

respondent, by the subsequent EIA Notification dated 22.12.2014 amended the 2006 Notification exempting educational institutions from the need to obtain environmental clearance. However, the grievance placed by the learned Senior Counsel for the petitioner would show that the impugned notification arbitrarily created an unreasonable classification between the constructions made between 2006 and 2014 on the one hand and the constructions that were done post 2014. Therefore, the petitioner again applied to the Director of Town and Country Planning on 12.01.2021 to remove the condition for obtaining environmental clearance from the technical approval of building plans. Thereafter, the petitioner also made a representation before the fifth respondent for withdrawal of its application under the 2006 Notification, as it is not applicable to them vide letter dated 02.04.2021 and the said application for withdrawal is still pending. The learned Senior Counsel further contended that the State Level Environmental Impact Assessment Authority, the fifth respondent herein, taking advantage of the fact that the impugned Notification creates an artificial and unreasonable classification, wrote to the Principal Secretary, Environment Department, the second respondent herein on 26.11.2019 to take action under Section 19 of the Environment (Protection) Act, 1986 against the petitioner without application of mind and the second respondent also directed the Tamil Nadu Pollution Control Board on 12.12.2019 to take action against the petitioner without application of mind, in pursuance of which, the District Environmental Engineer, Tamil Nadu Pollution Control Board, Coimbatore (South), the fourth respondent has issued the show cause notice dated 19.11.2021 calling upon the petitioner to show cause within 15 days as to why prosecution should not be initiated under Section 19(a) of the Act. Mr.Sathish Parasaran, pointing out the change of mind of the respondents to prosecute the petitioner, has stated that the fifth respondent, although initially suggested action being taken against the petitioner under Section 19 of the Act on 26.11.2019, had issued a Terms of Reference (ToR) dated 20.03.2020 recommending for the issue of Standard ToR for the preparation of EIA report, but there was no violation identified even in the said ToR. However, in the meanwhile, the first respondent had come up with an Office Memorandum bearing F.No.22-

21/2020-IA.III dated 07.07.2021, that formulated a Standard Operating Procedure for the persons who had not sought for the environmental clearance under the 2006 EIA Notification. The said Office Memorandum, on being challenged before the Madurai Bench in W.P.(MD) No.11757 of 2021, has been stayed by the order dated 15.07.2021.

5. Again assailing the impugned notice issued by the fourth respondent, Mr.Sathish Parasaran argued that when the petitioner had constructed buildings for educational purposes, namely, Isha Yoga Centre offering various yoga programs ranging from a program for a few hours to programs for until a period of three years for the general public teaching various yogic practices, kriyas and mediation techniques and also conducting the inner engineering leadership program sponsored by the Department of Personnel & Training, Government of India for the All India Service Officers, the impugned notice issued by the fourth respondent failed to note that the petitioner Isha Yoga Centre is also falling within the meaning of educational institution, because the 2014 Notification has

clearly and explicitly granted exemption to schools, college, hostels, which are having the built up area of less than 1,50,000 sq.m. Continuing his arguments, the learned Senior Counsel submitted that the impugned notice dated 19.11.2021 issued by the fourth respondent clearly admits that the buildings constructed by the petitioner are for educational purposes, that is also evident from the fact that the fourth respondent, in the impugned notice, has stated that the petitioner had constructed the residential units, school, meditation hall etc. Besides, when the fourth respondent also acknowledges the fact that the petitioner is an educational institution, the inconsistent stand that the constructions made by the petitioner between the years 2006 and 2014 should be treated as violative of environmental clearance, is arbitrary, as the petitioner had already submitted an application for withdrawal of the ex-post facto environmental clearance, for the reason that the 2014 Notification issued by the first respondent has made the point clear that the exemption granted to the schools, colleges, hostels from obtaining the EIA clearance will be applied with retrospective effect. Concluding his arguments, Mr.Sathish Parasaran contended that when the fifth respondent has not been reconstituted since 04.11.2021 at the time of issuance of the impugned show cause notice and when that authority has issued the Terms of Reference dated 20.03.2020, the fourth respondent has no jurisdiction to issue the impugned show cause notice. Therefore, the entire writ petition deserves to be allowed by setting aside the impugned notice, he pleaded.

6. A detailed counter affidavit has been filed by the second respondent. Mr.J.Ravindran, learned Additional Advocate General appearing for the second respondent submitted that after inspecting the petitioner Isha Foundation on 17.11.2021, the show cause notice dated 19.11.2021 under Section 19(a) of the Environment (Protection) Act, 1986 for the construction of project without obtaining environmental clearance was issued. The petitioner also furnished the reply on 12.12.2021 stating that the unit has submitted their request to withdraw the EC application to the State Level Environmental Impact Assessment Authority on 02.04.2021, in the light of the exemption granted for the educational institution. But the

said authority has not communicated the acceptance of withdrawal application submitted by the unit. Thereafter, criminal complaint under Section 200 of the Criminal Procedure Code for the offence under Section 15 read with Sections 16 & 19(a) of the Environment (Protection) Act, 1986 was filed before the Judicial Magistrate Court No.V, Coimbatore on 05.01.2022 and the case is yet to be numbered. In the meanwhile, the present writ petition has been filed. When the petitioner constructed the group development for yoga centre with a total plot area of 487418.59 sq.m. and total built-up area of 125800.41 sq.m. comprising of various types of residential units, school, meditation hall etc., and the total number of students in the school is about 500, the unit has violated the provisions of the EIA Notification, 2006, because the petitioner does not fall under educational institution accredited by the State/Central Government/reputed agencies, inasmuch as the petitioner is engaged in multiple activities apart from educational activities. Therefore, the writ petition has to fail, he pleaded.

7. A detailed counter affidavit has also been filed by the third and fourth respondents. Mr.R.Shunmugasundaram, learned Advocate General appearing for the above respondents submitted that after issuance of notice for inspection dated 16.11.2021, it was found that the petitioner unit had constructed total built up area of 125800.41 sq.m. Besides they have also constructed built up area of about 28279 sq.m. before the EIA Notification, 2006. Hence they have violated the provisions of the EIA Notification, for which notice has been issued rightly, because conducting various yoga programs do not fall under educational institution. The core contention of the learned Advocate General shows that the entire premises will not come under educational institution, because there is no concrete document evidencing the fact that the petitioner's premises is an educational institution. Therefore, the District Environmental Engineer, Tamil Nadu Pollution Control Board, Coimbatore (South) was authorised to launch prosecution under Section 19(a) of the Environment (Protection) Act, 1986 on behalf of the Tamil Nadu Pollution Control Board. Even otherwise, challenging the show cause notice, the petitioner cannot come to this Court.

Restating the stand taken in the additional counter affidavit filed by the third and fourth respondents, the learned Advocate General argued that the total built up area is more than 150000 sq.m. and the Notification dated 22.12.2014 does not provide any exemption to any structure-school, college etc., for application of 8(b). Therefore, even the claim of exemption as an educational institution is not acceptable and the writ petition deserves dismissal, he pleaded.

8. W.M.P.No.25586 of 2022 in W.P.No.467 of 2022 has been filed by Mr.E.Seshan to get himself impleaded as a party respondent in the matter. Mr.A.Yogeshwaran, learned counsel appearing for the proposed respondent submitted that the proposed respondent is a retired wildlife photographer from the Zoological Survey of India having served for more than 35 years and he has also filed Writ Petition No.13835 of 2015 challenging the notification dated 22.12.2014 issued by the first respondent in S.O.3252(E) amending Notification S.O.1533(E) dated 14.09.2006. Therefore, he is one of the necessary parties to be impleaded, hence his application should be

allowed. Arguing further, the learned counsel submitted that the writ petitioner is an egregious violator of environmental laws, as they have carried out extensive construction of more than 150000 sq.m. without environmental clearance in the foothills of Velliangiri Hills of the Western Ghats and they have also violated the EIA Notification, 2006. Therefore, they are liable to be prosecuted under Section 15 of the Environment (Protection) Act, 1986. He also submitted that the impugned Notification dated 22.12.2014 has been stayed by the High Court of Kerala in its order dated 17.09.2020 in W.P.(C) No.3097 of 2016 and the said interim order is still continuing. The writ petitioner is not entitled to get the benefit of exemption, because Isha Foundation cannot be construed as an educational institution. The EIA Notification was issued in fulfillment of India's international obligations including the Rio Declaration of 1992, which states that in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities and the fulfillment of India's international obligations require that the precautionary principle is followed in letter and spirit. Besides, the UN General Assembly also adopted the World Charter for Nature on 28th October at the 48th plenary meeting *inter alia* recalling the need for appropriate measures at the national and international levels to protect nature and promote international co-operation in that field. Therefore, there cannot be any derogation from these obligations. Hence the proposed respondent has to be impleaded to place before this Court important facts for deciding the issue.

9. Mr.Yogeshwaran further submitted that when the Notification dated 22.12.2014 does not exempt all educational institutions from obtaining environmental clearance under entry 8(a) of the EIA Notification, as it has brought Note 1 in entry 8(a) stating that the projects or activities shall not include industrial shed, school, college, hostel for educational institutions, the Isha Foundation cannot be considered as an educational institution. Coming to the order of stay granted by the High Court of Kerala, the learned counsel stated that the Hon'ble Apex Court in the case of *Kusum Ingots & Alloys Ltd. v Union of India and others, (2004) 6 SCC 254* has held that any order passed in a writ petition questioning the constitutionality

of a parliamentary Act, whether interim or final, in view of the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act. Therefore, the interim order of stay granted by the Kerala High Court in W.P.(C) No.3097 of 2016 dated 17.09.2020 staying the notification will be applicable to the State of Tamil Nadu. Hence the proposed respondent may be impleaded as a necessary party in the writ petition, he pleaded.

10. Similarly, W.M.P.No.28625 of 2022 in W.P.No.467 of 2022 has been filed by Mr.S.Muralidharan/Party-in-Person to get himself impleaded as one of the necessary parties, stating that though the petitioner is the founder of Indian Centre for Animal Rights and Education (INCARE), after seeing the article in "The Hindu" newspaper on 29.09.2022 about Isha Foundation violating the construction without environmental clearance, has been advised to file this miscellaneous petition in order to assist this Court and advance his submissions in this regard. The affidavit also further states

that the Isha Foundation, Coimbatore had constructed (1994 to 2008) various buildings in an area of 32,856 sq.ft. in Booluvapatti Village with permission from Booluvapatti Village Panchayat and also requested the Forest Department to issue No Objection Certificate and ex-post facto approval from HACA for the already constructed buildings. This would lead to a disaster of the ecology in the Western Ghats. Therefore, he may be permitted to take part in the proceedings.

11. A detailed counter affidavit has been filed by the Secretary to Union of India, Ministry of Environment, Forest and Climate Change, the first respondent herein. Mr.R.Sankaranarayanan, learned Additional Solicitor General appearing for the first respondent submitted that prior to amending the Notification, the Ministry of Environment, Forest & Climate Change received multiple representations raising a query whether items 8(a) and 8(b) of the Schedule to the EAI Notification, 2006 would cover all the project proponents that undertook construction activities over an area of more than 20,000 sq.m. or less than 1,50,000 sq.m. built up area and would

mandatorily require prior environmental clearance. In similar circumstances, the Delhi High Court in Writ Petition (C) No.2066 of 2014 in the case of *Maruti Suzuki India Ltd., v The Ministry of Environment and Forests and others*, by the order dated 26.05.2014, has held that the EIA Notification of 2006 was applicable to all projects and activities irrespective of their nature, the notification bearing S.O.3252(E) dated 22.12.2014 has clearly clarified that the projects or activities in any industrial shed, school, college, hostel for educational institution were exempt from obtaining prior environmental clearance as per 8(a) of the EIA Notification and this would take retrospective operation. Therefore, the notification dated 22.12.2014 does not create any unreasonable classification between the persons who constructed buildings pre and post notification dated 22.12.2014, as alleged by the petitioner.

12. Heard the learned counsel appearing for the parties.

13. The petitioner, Isha Foundation is stated to be a volunteer-run

registered public charitable trust founded with the admirable aims to shape the physical, mental and spiritual wellbeing of everyone and is also claiming to be a non-profit yoga educational organisation carrying on various projects like greenhands, action of rural rejuvenation, isha vidhya, rally for rivers etc., The petitioner also claims to have received the Indira Gandhi Paryavaran Puraskar in the year 2010 for undertaking activities including conducting classes and training on agroforestry to farmers, plant nurseries in schools and tree planting in urban centres. When it had set up the Isha Yoga Centre in the year 1994 to run a group of educational institutions, it also runs the Isha Yoga Centre offering variety of courses like yoga, classical arts and Sanskrit through a Gurukula format and also English medium education affiliated to the ICSE Board. When the petitioner has constructed buildings from the year 1994 to 2006 and also thereafter at their campus, an application was made to the Director of Town and Country Planning to grant necessary approvals of the building plans and the Director also granted a conditional approval on 03.05.2017 to the building plan on condition that the petitioner shall not commence any activity, excepting fencing of the site and construction of temporary shed for guard, without obtaining environmental clearance under the EIA Notification from the State Level Environmental Impact Assessment Authority, the fifth respondent herein. On 12.04.2018, the petitioner applied for environmental clearance under category 8(a) of the EIA Notification dated 14.09.2006 to the fifth respondent, on the basis of S.O.804(E) dated 14.03.2017 read with S.O.1030(E) dated 08.03.2018 issued by the first respondent Union of India that prescribed a detailed procedure to obtain environmental clearance for projects that have already commenced without any clearance under the EIA Notification, 2006. Subsequently, the Ministry of Environment, Forest and Climate Change, the first respondent herein has amended the 2006 Notification in S.O.3252(E) specifically exempting educational institutions from the need to obtain environmental clearance. As the said notification exempted the buildings constructed by the educational institutions from the date of issuance of the notification, the writ petition filed already asking for exemption with retrospective effect, on the premise that the impugned notification creates an unreasonable classification between the constructions made between 2006 and 2014 on the one hand and the constructions made post 2014, in the counter affidavit filed by the first respondent, in paragraphs 10 & 11, it has been stated as follows:-

> "10. It is submitted that subsequently, the Answering Respondent issued Notification S.O.3252(E) dated 22.12.2014 categorically stating that it was an amendment to the EIA notification 2006, wherein industrial shed, school, college, hostel for educational institution were exempted. A true copy of the above mentioned notification has already been annexed and marked as Annexure R/3.
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> 11. Following the 2014 amendment, column 5 of para 8(a) to the Schedule reads, "The term "built up area" for the purpose of this notification the built up or covered area on all floors put together, including its basement and other service areas, which are proposed in the buildings or construction projects."

14. A reading of the above paragraphs would show clearly the stand of the first respondent that the industrial shed, school, college and hostel for

educational institution were exempted from getting the environmental clearance. Secondly, the High Court of Delhi in W.P.(C) No.2066 of 2014 in the case of *Maruti Suzuki India Ltd. v The Ministry of Environment and Forests and others*, by the order dated 26.05.2014, has also held that the EIA Notification of 2006 was applicable to all the projects and activities irrespective of their nature and that the said notification is otherwise free from ambiguity. Therefore, when the notification bearing S.O.3252(E) dated 22.12.2014 issued by the first respondent makes the issue vividly clear that the industrial shed, school, college & hostel for educational institution were exempted from obtaining prior environmental clearance, as per 8(a) of the EIA notification, the buildings constructed by the petitioner, both prior to 2006 and post 2014 were exempted from obtaining prior environmental clearance, as per 8(a) of the EIA Notification. Secondly, the Hon'ble Apex Court in *National Highways Authority of India v. Pandarinathan Govindarajulu and another, (2021) 6 SCC 693*, has answered the argument advanced by the respondent-Tamil Nadu Pollution Control Board, as to whether the exemption notification would apply to the petitioner yoga centre with the buildings constructed prior to 2014, in paragraph 14, as follows:-

> "14. It is submitted on behalf of the Ministry of Environment, Forest and Climate Change, Government of India that environmental clearance is necessary only if the expansion project pertains to a National Highway which is greater than 100 km and involves additional right of way or land acquisition greater than 40 m on existing alignments and 60 m on realignments or bypasses. In case of a doubt, the interpretation of the author of the notification has to be accepted. Ergo, the opinion of the author of the notification i.e, the Ministry of Environment, Forest and Climate Change deserves to be accepted." *(emphasis supplied)*

15. A mere reading of the above would show that in case of a doubt, the interpretation of the author of the notification has to be accepted, because the opinion of the author of the notification i.e., the Ministry of Environment, Forest and Climate Change deserves to be accepted. Therefore, when the petitioner comes to this Court seeking the benefit of

exemption granted to the buildings constructed even prior to the 2006 and 2014 notifications, the counter affidavit filed by the first respondent stating that the projects or activities, namely, industrial shed, school, college and hostel for educational institution were exempt from obtaining prior environmental clearance as per 8(a) of the EIA notification, brings a quietus to the controversy raised by the official respondents. Even the impugned show cause notice dated 19.11.2021 issued by the fourth respondent also admits the case of the petitioner as to the total built up area of Rs.1,25,800.41 sq.m. comprising of various types of residential units, schools, meditation hall etc. It is therefore necessary to extract the relevant portion of the show cause notice, which reads as follows:-

> "Whereas, your company of M/s Isha Foundation, S.F.No.4 & 6 etc., Ikkarai Boluvampatti Village, Perur Taluk, Coimbatore District has undertaken the Project of the Construction of Group Development for Yoga Centre with total plot area of 4,87,418.59 sq.m. and total built up area of 1,25,800.41 sq.m. comprising of various types of residential units, school, meditation hall etc."   (*emphasis supplied*)

16. When the fourth respondent has clearly taken a stand in the form of admission in the show cause notice, by virtue of Section 58 of the Evidence Act, facts admitted need not be proved. Therefore, Section 58 of the Evidence Act is extracted hereunder:-

> "58.Facts admitted need not be proved
> No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleading provided that the Court may, in its discretion, require the facts admitted to be proved otherwise then by such admissions."

17. A careful reading of the above provision tells us that when any party to the proceedings has agreed to admit at the hearing by writing, the fact is deemed to have been admitted. Law does not permit a person to approbate and reprobate. In the case on hand, the fourth respondent, after admitting the fact that the petitioner has undertaken the project of

construction of group development for yoga centre, which as per the definition of the term "educational institution" in the Noise Pollution (Regulation and Control) Rules, 2000 includes a school, seminary, college, university including those things essential to mental, moral and physical development, ought not to have issued the impugned notice taking a contra stand. This principle is based on the doctrine of election, which postulates that a party cannot be permitted to blow hot and cold. In similar circumstances, a Division Bench of this Court, in which one of us (T.R.,ACJ) was a party, in A.S.No.594 of 2011 dated 06.01.2021 (S.Balachandar v. N.Palanisamy), while quoting the provision of Order XII, Rule 6 of the Code of Civil Procedure, which reads as follows,

> "Order XII Rule 6
>
> 6. Judgment on admissions – (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other questions between the parties, make such order or

> give such judgment as it may think fit, having regard to such admissions.",

considering the consequence of one party admitting the controversy in a legal proceeding inevitably invokes the application of Order XII, Rule 6 of CPC, has also held that the Court may, at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other questions between the parties, make such order or give such judgment as it may think fit with regard to the admission. In the light of this legal provision, the claim of the petitioner that school, college etc., were exempt from obtaining prior environmental clearance as per 8(a) of the EIA Notification, needs to be accepted, on the basis of the admission highlighted above by the fourth respondent.

18. Secondly, after admitting their stand in the show cause notice, the respondent-Tamil Nadu Pollution Control Board cannot improve their case in the form of additional counter to deny the benefit, as it is opposed to the settled ratio laid down by the Hon'ble Apex Court in the famous case of *Mohinder Singh Gill and another v. Chief Election Commissioner, New*

Delhi and others, (1978) 1 SCC 405, wherein the Court held as under:-

> "8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16:*
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> > "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those

> to whom they are addressed and must be construed objectively with reference to the language used in the order itself."
>
> Orders are not like old wine becoming better as they grow older." (emphasis supplied)

In addition thereto, in the same line, a Division Bench of the High Court of Madhya Pradesh (Jabalpur Bench) in the case of *Sunny Juneja and others v. State of M.P. and others, MANU/MP/0625/2018,* placing reliance on the aforementioned judgments, has also held as follows:-

> "11. The Board cannot be permitted to change its stand than what was taken in the show cause notice and the order passed. The Board cannot give additional reasons to support the allegation of use of unfair means in the writ petition."

19. Therefore, in the light of the above settled legal positions, if we look at the case on hand, in the impugned show cause notice, the fourth respondent has clearly admitted that the petitioner has undertaken the project of construction of group development for yoga centre with a total

built up area of 1,25,800.41 sq.m. out of total plot area of 4,87,418.59 sq.m. comprising of various types of residential units, school, meditation hall etc., which, in our considered opinion, will fall within the scope of the amended notification granting exemption. As we have highlighted above, the counter affidavit filed by the first respondent also makes it clear that the exemption granted by the first respondent would not only have retrospective operation, but also would apply to the school, college, hostel etc., of the petitioner herein.

20. The next question that falls for consideration is whether the Isha Yoga Centre can also be construed as an educational institution? First of all, paragraph-9 of the additional counter affidavit filed by the respondent-Tamil Nadu Pollution Control Board says thus:

> "9. It is respectfully submitted that the unit of M/s Isha Foundation is comprising of various types of residential units, school, meditation hall etc., and the total number of students in the school at Isha is about 500 Nos. However, the unit has constructed total built up area of 125800.41 sq.m. which

> clearly shows that the unit is not only an educational institution but has other activities like yoga, meditation hall etc."

Even the Ministry of Environment, Forest and Climate Change, Impact Assessment Division, Government of India, clarifying the applicability of EIA Notification 2006 for educational institutions, vide proceedings dated 19.05.2022 in F.No.19-131/2019-IA-III[128798], tracing the definition of the term "educational institution", adumbrated in the Noise Pollution (Regulation and Control) Rules, 2000 under the Environment (Protection) Act, 1986, as meaning a school, seminary, college, university, professional academies, training institutes or other educational establishment, not necessarily a chartered institution and includes not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instruction, including those things essential to mental, moral and physical development. When the definition of educational institution not only means the school, college, but also includes a seminary, university, professional academy, training institute or other educational establishments including those things essential to mental, moral and physical development, we are of the considered opinion that the yoga centre being run by the petitioner will also fall within the term of educational institution entitling them to the benefit of exemption from obtaining environmental clearance, as per 8(a) of the amended notification to the EIA Schedule. Above all, the Ministry of Environment, Forest and Climate Change, Impact Assessment Division, Government of India has also issued an addendum to the clarification dated 19.05.2022, by way of an Office Memorandum dated 28.06.2022 in F.No.19-131/2019-IA-III[128798] on the applicability of the EIA Notification 2006 for educational institutions. It is pertinent to extract the entire Office Memorandum below:

"F.No.19-131/2019-IA-III [128798]
Government of India
Ministry of Environment, Forest and Climate Change
Impact Assessment Division

Indira Paryavaran Bhawan
3rd Floor, Vayu Wing, Jor Bagh Road
Ali Ganj, New Delhi-3
28th June, 2022

OFFICE MEMORANDUM

Subject: Addendum to the clarification dated 19th May 2022 on the applicability of EIA Notification 2006 for Educational Institutions - regarding.

Ministry of Environment, Forest and Climate Change vide Office Memorandum of even number dated 19th May 2022 issued a clarification on the applicability of EIA Notification 2006 for Educational Institutions.

2. In this regard, taking into account the Writ Petition No.3097/2016 pending before the Hon'ble High Court of Kerala and the recent order of Hon'ble Supreme Court dated 9th December 2021 in the matter of Civil Appeal Nos.7576-7577 of 2021 in Electrosteel Steels Limited vs Union of India and Ors., the following para has been incorporated in para 5 of the above mentioned OM dated 19th May, 2022:

"*In view of the interim Order of the High Court of Kerala at Ernakulum [in writ petition W.P.(C) No.3097 of 2016 (S)] dated 17.09.2020 and 23.11.2020 against the amendment to the EIA Notification, 2006 dated 22.12.2014, the aforesaid clarification is applicable within the territorial jurisdiction of High Court of Kerala subject to the outcome of the aforementioned Writ Petition pending in the High Court of Kerala at Ernakulum.*"

This issues with the approval of the Competent Authority.

Sd/-

Scientist E"

A careful reading of the above Office Memorandum dated 28.06.2022 clearly answers the arguments advanced by the respondents that the interim order passed by the High Court of Kerala in W.P.(C) No.3097 of 2016 is applicable within the territorial jurisdiction of the High Court of Kerala subject to the outcome of the writ petition pending before it.

21. Moreover, Education is coming under Entry 25 of List III (Concurrent List) in Schedule VII of the Constitution of India. When List I is occupied by the Union, List II is occupied exclusively by the State, whereas in List III, being the Concurrent List, both the Union and the States are entitled to legislate on the matters enumerated therein with a rider that if there is any conflict of interest or inconsistency between the State and Central Acts, as per the settled legal position, the Central Act will prevail over the State Act. Similarly, in the present case, when Education coming under Entry 25 of List III in Schedule VII falls in the Concurrent List, the primacy of the Central Government to occupy the field will prevail over. Therefore, in the light of the settled legal position, when the notification issued by the Central Government giving retrospective effect to the buildings constructed prior to 2006 and post 2014, also makes it clear that the benefit of exemption will enure to all the educational institutions including the petitioner's yoga centre, the impugned notice issued by the

State taking a contra stand as though the notification giving the benefit of exemption with retrospective effect will not apply to the yoga centre being run by the petitioner, has no legs or authority to stand to any good reason. Therefore, the impugned order is liable to be set aside.

22. However, a vain attempt has been made by Mr.A.Yogeshwaran, learned counsel appearing for the proposed respondent to say that the notification dated 22.12.2014 has been challenged in Writ Petition (C) No.3097 of 2016 before the High Court of Kerala and in view of the order of stay granted by the High Court of Kerala dated 17.09.2020, it applies not only within the territorial jurisdiction of the High Court of Kerala, but also extends to Tamil Nadu and other States.

23. In this context, before answering this argument, we wish to extract clause (2) of Article 226 of the Constitution of India, which reads as follows:-

> "(2) The power conferred by clause (1) to issue directions, orders or writs to any Government,

> authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

Although a mere perusal of the above article shows that the extraordinary power conferred by clause (1) to issue directions or orders may be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, useful reference can be had from the judgment of the Hon'ble Apex Court in the case of *Union of India and others v. R.Thiyagarajan, (2020) 5 SCC 201*, wherein the Hon'ble Apex Court, while considering the effect of orders/directions of High Court passed against Union of India whether would have pan India effect or would be restricted to State(s) concerned over which the High Court has territorial jurisdiction, has observed as follows:-

> "18. We also are of the view that the High Court exceeded its jurisdiction in matters like this. The High Court exercise its

> jurisdiction only over State(s) of which it is the High Court. It has no jurisdiction for the rest of the country. Matters like the present may be pending in various parts of the country. In the present case, matter had been decided by the Delhi High Court but some other High Court may or may not have taken different view. The High Court of Madras could not have passed such order. It has virtually usurped the jurisdiction of other High Courts in the country. It is true that sometimes this Court has ordered that all similarly situated employees may be granted similar relief but the High Court does not have the benefit of exercising the power under Article 142 of the Constitution. In any event, this Court exercises jurisdiction over the entire country whereas the jurisdiction of the High Court is limited to the territorial jurisdiction of the State(s) of which it is the High Court. The High Court may be justified in passing such an order when it only affects the employees of the State falling within its jurisdiction but, in our opinion, it could not have passed such an order in the case of employees where pan India repercussions would be involved."

24. In the light of the above authoritative pronouncement, in the present case, although the notification issued by the Union of India has been stayed by the High Court of Kerala, as mentioned already, in the light of the observation made by the Hon'ble Apex Court in the judgment cited supra, it has no jurisdiction for the rest of the country.

25. Therefore, for all the aforementioned reasons, when the fourth

respondent has admitted the case of the petitioner in their counter affidavit that the petitioner has undertaken the project of construction of group development for yoga centre with a total built up area of 1,25,800.41 sq.m. out of total plot area of 4,87,418.59 sq.m. comprising of various types of residential units, school, meditation hall etc., and in view of our findings that the yoga centre being run by the petitioner also comes within the definition of educational institution, thereby entitling the petitioner to get the benefit of exemption from obtaining the environmental clearance for the buildings constructed pre 2006 and post 2014, as per 8(a) of the amended notification dated 22.12.2014 to the EIA schedule that would necessarily have retrospective operation as agreed by the first respondent, the impugned notice seeking to initiate prosecution against the petitioner cannot be legally sustainable and therefore, the writ petition stands allowed by quashing the impugned notice.Consequently,W.M.P.No.516 of 2022 stands closed. There shall be no order as to costs.

26. In view thereof, considering the fact that the petitioner has come

to this Court challenging the impugned show cause notice issued by the fourth respondent and it is a lis between the parties concerned, we are not inclined to accept the prayer made by the proposed respondents to implead them as necessary parties to the writ proceedings. Accordingly, W.M.P.Nos.25586 & 28625 of 2022 shall stand rejected.

Speaking/Non speaking order (T.R.,A.C.J.) (D.K.K.,J.)
Index : yes/no 14.12.2022

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To

1. The Secretary to Union of India
   Ministry of Environment, Forest and
   Climate Change
   Indira Paryavaran Bhawan
   Jorbagh Road
   New Delhi 110 003
2. The Principal Secretary to Government
   Department of Environment
   Secretariat, Fort St.George
   Chennai 600 009

3. The Chairman
   Tamil Nadu Pollution Control Board

No.76, Anna Salai, Guindy
Chennai 600 032

4. The District Environmental Engineer
   Tamil Nadu Pollution Control Board
   Coimbatore (South)
   Plot No.E-55A, SIDCO Industrial Estate
   Pollachi Main Road, Kurichi
   Coimbatore-641 021

5. State Level Environmental Impact
   Assessment Authority
   Department of Environment
   No.1, Jeenis Road
   Panagal Maligai, Ground Floor
   Saidapet, Chennai 600 015

THE HON'BLE ACTING CHIEF JUSTICE

AND

D.KRISHNAKUMAR,J.

ss

Order in

W.P.No.467 of 2022

14.12.2022