WMP Nos.25101, 25106 and 25090 of 2022
in
W.P.No.467 of 2022

THE HON'BLE ACTING CHIEF JUSTICE
and
D.KRISHNAKUMAR, J.

(Order of the Court was made by the Hon'ble Acting Chief Justice)

Isha Foundation, Coimbatore, has filed the miscellaneous petitions in WMP Nos.25101, 25106 and 25090 of 2022. The prayer is for amendment of averments, prayer and grounds in the main writ petition in WP No.467 of 2022.

2. The amendments sought for are :

(a) amend the averments in the Affidavit accompanying the Writ Petition in W.P. No. 467 of 2022 to:-

(i) delete the existing Paragraph 2 and include the following paragraph after Paragraph 1:-

"2. I submit that the Petitioner is filing the present Writ Petition seeking for:-

*(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/TNPCB/CBS/F.CBS-NA/R/L/EC/2021 dated 19.11.2021 and quash the same as illegal and thus render justice.”*

(ii) to replace the Paragraph 17 with the following:-

17 (a) I state that in the month of May 2022, the 1st Respondent issued an Office Memorandum in F.No. 19-131/2019-IA-III[129798] dated 19.05.2022 in order to clarify on the applicability of the EIA Notification 2006 for Educational Institutions. By way of the said Office Memorandum, the 1st Respondent clarified that the said EIA Notification 2006 is not applicable to educational institutions and further proceeded to rely on the definition of 'educational institutions' as defined under the Noise Pollution (Regulation and Control) Rules, 2000 framed under the Environmental Protection Act, 1986.

(b) I submit that by virtue of the said clarification issued by the 1st Respondent, it is now clear that the exemption as stated under EIA Notification 2006 and 2014 are very well applicable to the Petitioner as the same is an 'educational institution' falling within the definition of educational institutions under the Noise Pollution (Regulation and Control) Rules, 2000 framed under the Environmental Protection Act, 1986. I submit that the said definition reads as follows:-

*"educational institution" means a school, seminary, college, university, professional academies, **training institutes or other educational establishment, not necessarily a chartered institution an includes not only buildings, but also all grounds necessary for the accomplishment of the full scope of education instruction, including those things essential to mental, moral and physical development.**"*

(c) I submit that from the above it is now clear that the definition of educational institution not only means a school or a college, but includes every professional academy, training institutes and other educational establishments. This definition supports the stand of the Petitioner in as much as the Petitioner is a group of interrelated educational institutions that offers several wide variety of courses in respect of Yoga, yogic practices, kriya, meditation recognized by the Ministry of Home Affairs, Leadership and management training conducted for corporates and entrepreneurs at Isha Leadership Academy and Inner Engineering Leadership Programmes sponsored by the

Department of Personnel and Training, Government of India for All India Service Officers for the past 8 years. In fact, even recently i.e. on 27.07.2022, the Yoga Certification Board has confirmed the approval of Petitioner being a Leading Yoga Institution based on the approval of the Secretary of Ministry of AYUSH, Government of India. The confirmation issued by the Head of Institute, Yoga Certification Board in F.No.6-13/MDNIY/YCI/Board/ AC/2018 dated 27.07.2022 would show that the Petitioner's approval as Leading Yoga Institution is valid till 21.07.2032.

(d) Further, I submit that when the EIA Notification 2006 clearly exempts all the educational institutions from applying for Environmental Clearance, I submit that the 4th Respondent could not have issued the Impugned Show Cause Notice dated 19.11.2021 and therefore the same is without jurisdiction and liable to be quashed as illegal.

(b) amend the Grounds in the Affidavit accompanying the Writ Petition in W.P. No. 467 of 2022 to include the following paragraphs after

Paragraph 18(Q):-

R. The Respondents have failed to consider the fact that the 2014 notification has clarified the 2006 notification and that the 2006 notification does not in any manner apply to educational institutions that are constructed for educational purposes including all the grounds necessary for the accomplishment of the full scope of education instruction, including those things essential to mental, moral and physical development.

S. That the definition of educational institution includes every seminary, professional academy, training institutes and other educational establishments.

T. That the Yoga Certification Board has confirmed the approval of Petitioner being a Leading Yoga Institution based on the approval of the Secretary of Ministry of AYUSH, Government of India. The confirmation issued by the Head of Institute, Yoga Certification Board in F.No.6-13/MDNIY/YCI/Board/AC/2018 dated 27.07.2022 would show that the Petitioner's approval as

Leading Yoga Institution is valid till 21.07.2032.

U. That the 4^{th} Respondent ought to have taken into consideration that the Petitioner is an institution that offers several wide variety of courses in respect of Yoga, yogic practices, kriya, meditation recognized by the Ministry of Home Affairs, Leadership and management training conducted for corporates and entrepreneurs at Isha Leadership Academy and Inner Engineering Leadership Programmes sponsored by the Department of Personnel and Training, Government of India for All India Service Officers for the past 8 years and as such an educational institution in every sense and hence exempt obtaining any Environmental Clearance.

V. That the 4th Respondent failed to note that the Petitioner clearly falls within the meaning of educational institutions since the Isha Yoga Center offers various Yoga programs, conducts the Inner Engineering Leadership Programme sponsored by Department of Personnel & Training, Govt of India for All India Service Officers for last 8 years, conducts Leadership and management training *program for corporates and entrepreneurs, manages the Isha Home School, a residential school under ICSE Board and the Isha Hatha Yoga School, which provides certificate courses for students from 60+ countries to teach Hatha Yoga across the world and as such well within the meaning of educational institutions specified under the 2014 EIA Notification.*

W. That even as per the Impugned Notice issued by the 4th Respondent, the 4th Respondent admits that the buildings constructed by the Petitioner are for educational purposes and this is evident from the fact that the 4th Respondent in the Impugned Notice has stated that the Petitioner has constructed "residential units, school, Meditation Hall etc." Therefore, the 4th Respondent is estopped from taking a stand that the Petitioner is not involved in educational purposes.

X.That the 4th Respondent had no jurisdiction in the first place to issue a show cause notice to the Petitioner under Section 19 of the Environment Protection Act, 1986 especially when *the 5th Respondent has not been re-constituted since 04.11.2021 at the time of issuance of impugned show cause notice and when that authority had issued a Terms of Reference dated 20.03.2020.*

Y. That the 4th Respondent acted without jurisdiction in issuing the Impugned Notice when the Petitioner had submitted its application to withdraw from the ex post facto Environmental Clearance on the ground that the Petitioner was no more required to seek for Environmental Clearance due to the substitution brought forth in the year 2014.

(c) amend prayer portion in Affidavit accompanying the Writ Petition and the Memorandum of Writ Petition in W.P. No.467 of 2022 to include the following prayer as prayer (d):-

"(d) pass a writ, order or direction more particularly in the form of a ***WRIT OF CERTIORARI*** *calling for all the records pertaining to the proceedings of the 4th Respondent in Proc No. DEE/TNPCB/CBS/F.CBS-NA/R/L/EC/2021 dated*

19.11.2021 and quash the same as illegal and thus render justice"

3. Learned Senior Counsel for the petitioner submitted that originally, the writ petition was filed challenging the EIA Notification dated 22.12.2014 bearing S.O.3252(E) issued by the 1st respondent under Section 6 of the Environment Protection Act, 1986 read with Rule 5(3) of the Environment Protection Rules, 1986.

4. This Court passed an interim order on 11.01.2022, directing the respondents not to proceed further with the show-cause notice dated 19.11.2021 and further ordered notice to the other respondents returnable by 01.02.2022.

5. The third respondent filed counter-affidavit on 27.01.2022, categorically taking a stand that the petitioner is not entitled for any exemption under the Environmental Impact Assessment Notification 2006 and 2014 as an educational institution, since the petitioner is engaged in multiple activities apart from carrying out the functions of an educational institution.

6. The petitioner seeks to amend the prayer, seeking for a Writ of Declaration that the EIA Notification dated 22.12.2014 bearing S.O. 3252E issued by the first Respondent under Section 6 of the Environment Protection Act, 1986 read with Rule 5(3) of the Environment Protection Rules, 1986 insofar as it creates an unreasonable classification between the persons who constructed buildings prior to 22.12.2014 and after 22.12.2014 as arbitrary and ultra vires the Constitution. The petitioner also sought for striking down the notification as illegal, unconstitutional, and to declare that the petitioner is also entitled to the exemption granted under the EIA Notification 2014, with effect from the commencement of the EIA Notification dated 14.09.2006.

7. In the meanwhile, the first respondent issued Office memorandum dated 19.05.2022 to clarify on the applicability of EIA Notification 2006 for educational institutions.

8. When the first respondent in the clarification dated 19.05.2022 clarified that the said EIA Notification 2006 is not

applicable to educational institutions and further proceeded to rely on the definition of 'educational institution' as defined under the Noise Pollution (Regulation and Control) Rules, 2000 framed under the Environment Protection Act, 1986, the issuance of show-cause notice by the fourth respondent dated 19.11.2021 is without jurisdiction and therefore, the same is liable to be quashed. Hence, the petitioner has moved these petitions for amendment.

9. It is also argued by learned Senior Counsel for the petitioner that as per the impugned notice issued by the fourth respondent, the fourth respondent has admitted that the buildings constructed by the petitioner are for educational purposes and there are residential units, schools, meditation hall etc. Therefore, the fourth respondent is estopped from taking a stand that the petitioner is not involved in educational purposes. Therefore, the amendment applications have to be necessarily ordered.

10. An additional counter-affidavit has been filed by the Tamil Nadu Pollution Control Board on behalf of respondents 3 and 4, meeting the grounds taken by the petitioner in the amendment

applications with reference to the paragraphs R, S, T etc.

11. Learned Advocate-General appearing for the respondents replying to the amendment applications stated that when the Environmental Impact Assessment Notification, 2006 dated 20.09.2006 says that all the buildings and construction projects >20,000 sq.m and <1,50,000 sq.m of built up area requires prior environmental clearance, the projects or activities such as industrial shed, school, college and hostels for educational institution having <1,50,000 sq.m. are exempted from obtaining environmental clearance.

12. However, replying to paragraph S and T of the amendment applications, it is stated that the petitioner has confessed that they are conducting various yoga programmes, which do not fall under 'educational institution' accredited by State/Central/Reputed agencies, because the petitioner is engaging in multiple activities apart from educational institutions by constructing infrastructure buildings such as meditation halls, meditation complex, mandapam, activity hall, assembly hall, worksheds, duplex buildings and various other

buildings, and therefore, the entire premises will not fall under the definition 'educational institution'. It is for the reason that there is no concrete evidence stating that the petitioner premises is an educational institution. Moreover, in the approval obtained from the DTCP vide order dated 03.05.2017, the built-up area of school building comes to about 1,12,436 sq.ft (i.e.10915+10915+10915+10915+ 10915+10915+29570+17376 sq.ft.) viz., 10445.65 sq.m. The remaining area of 115354.8 sq.m, which is engaged in other activities, clearly shows that they should get environmental clearance.

13. Learned Advocate-General further submitted that the Member Secretary State Level Environment Impact Assessment Authority, Tamil Nadu requested the Principal Secretary to Government, E & F Department to take action against the project proponents of certain units under violation of EIA Notification, 2006. The Principal Secretary to Government E & F Department, vide letter No.20952/EC-3/2019-1 dated 12.12.2019 has asked the Tamil Nadu Pollution Control Board to take action against certain units for violation of the above notification. Thereafter, the unit of the petitioner was inspected on 17.11.2021 and the petitioner was also issued with a

show-cause notice under Section 19A of the Environment Protection Act, 1986 for the violation mentioned therein vide Proc.No.DEE/TNPCB/CBS/F.CBS-NA/R/L/EC/ 2021 dated 19.11.2021. On receipt of notice, the petitioner has also furnished reply dated 12.12.2021 stating that the unit has submitted their request to withdraw the EC application to SEIAA on 02.04.2021 in the light of MoEFCC exemption for educational institution. But the same has not been considered. SEIAA has not communicated the acceptance of the withdrawal proposal submitted by the unit.

14. When the reply given by the petitioner dated 12.12.2021 was considered, the fourth respondent has come to the conclusion that the petitioner unit falls under the definition of an 'educational institution'. Therefore, the reply furnished by the petitioner unit was found unsustainable because the petitioner unit has constructed total built up area of 1,12,436 sq.ft. Therefore, the said unit is not only an educational institution but also other activities like Yoga, meditation etc, are conducted there. Hence, the writ petition and also the amendment applications deserve to be rejected.

15. What we have seen from the pleadings made by the petitioner and the counter-affidavit filed by the fourth respondent is that when the petitioner has filed writ petition for issuance of Writ of Declaration to declare that the classification made by EIA Notification dated 22.12.2014 bearing S.O.3252(E) issued by the first respondent under Section 6 of the Environment Protection Act, 1986 read with Rule 5(3) of the Environment Protection Rules, 1986 creating an unreasonable classification between persons who constructed buildings prior to 22.12.2014 and after 22.12.2014 during the pendency of this writ petition, that too after an interim order has been passed by this Court, dated 11.01.2022, directing the respondents not to proceed in reference to the show-cause notice for prosecution without permission of this Court, the first respondent has issued a clarification vide the office memorandum dated 19.05.2022 clarifying on the applicability of EIA Notification 2006 for educational institution.

16. The relevant portion of the office memorandum issued by the first respondent, clarifying the applicability of EIA Notification 2006 for Educational institutions, dated 19.05.2022, is extracted hereunder:

"4. In this regard, Department of Higher Education, Ministry of Education has informed that different types of education institutions in terms of school, college, university, technical institutions etc., have been defined in various statutes for the purpose of recognition, affiliation, accreditation etc. However, there is no specific definition of the term 'educational institutions'. Further, Department of Higher Education informed that as per Noise Pollution (Regulation and Control) Rules, 2000 under the Environment Protection Act, 1986, the term 'educational institutions' has been defined, as:

"educational institution" means 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."*

17. A careful perusal of paragraph 4 extracted above clearly shows that as per the Noise Pollution (Regulation and Control) Rules, 2000 under the Environment Protection Act, 1986, the term 'educational institution' has been defined as a school, seminary, college, university, professional academies, training institutes or other educational establishment, including those things essential to mental, moral and physical development. Therefore, when the office memorandum dated 19.05.2022 has clarified the claim of the petitioner that educational institution would mean not only school, seminary, college, university, professional academies, training institutes, but also including those things essential to mental, moral and physical development, prima facie, it appears to us that the Yoga cenre built up by the petitioner also may be included.

18. Therefore the amendment applications deserve to be allowed. Accordingly, WMP Nos.25101, 25106 and 25090 of 2022 are allowed. No costs.

19. Office is directed to carry out the amendments.

(T.R., ACJ.) (D.K.K., J.)
09.11.2022
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D.KRISHNAKUMAR, J.

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