



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.30201 of 2015 and 297 of 2017

and

M.P.No.1 of 2015 and Crl.M.P.No.193 of 2017

Crl.O.P.No.30201 of 2015:-

1. M/s.Tagore Educational Trust-
Tagore Medical College and Hospital,
represented by its Trustee, M.Mala
No.27/29, Thilak Street,
Chennai-600 017.

2. M.Mala
Trustee,
M/s.Tagore Educational Trust-
Tagore Medical College and Hospital,
No.27/29, Thilak Street,
Chennai-600 017.

...Petitioners

-Vs-

The Tamil Nadu Pollution Control Board,
represented by its District Environmental Engineer,
R.Kannan,
Maraimalai Adigalar Street,
Maraimalai Nagar,
Kancheepuram District.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Code of



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

Criminal Procedure, to quash the proceedings in C.C.No.350 of 2015 pending on the file of Chief Judicial Magistrate, Chengalpattu.

For Petitioners : Mr.S.Ashok Kumar, Senior Counsel
for Mr.M.Deivanandam

For Respondent : Mr.R.Shanmugasundaram, Advocate General
Assisted by
Mrs.Shanmugavalli Sekar

Crl.O.P.No.297 of 2017:-

1. M/s.S.S.N.Trust – S.S.N.College of Engineering,
represented by its authorized Signatory
Kala Vijayakumar,
No.211/95, Venkatachalam Street (V.M.Street)
Off.Radhakrishnan Salai,
Mylapore,
Chennai-600 028.

2. Kala Vijayakumar
Authorised Signatory,
M/s.S.S.N.Trust – S.S.N.College of Engineering,
No.211/95, Venkatachalam Street (V.M.Street)
Off.Radhakrishnan Salai,
Mylapore,
Chennai-600 028.

...Petitioners

-Vs-

The Tamil Nadu Pollution Control Board,
represented by its District Environmental Engineer,
R.Kannan,
Maraimalai Adigalar Street,
Maraimalai Nagar,
Kancheepuram District.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Code of



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

Criminal Procedure, to call for the records in C.C.No.348 of 2015 pending on the file of Chief Judicial Magistrate, Chengalpattu, Kancheepuram District filed by the respondent/complainant and quash the same as against the petitioner.

For Petitioners : Mr.Srinath Sridevan, Senior Counsel
for Mr.A.Sasidharan

For Respondent : Mr.R.Shanmugasundaram, Advocate General
Assisted by
Mrs.Shanmugavalli Sekar

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C.Nos.348 and 350 of 2015 pending on the file of the learned Chief Judicial Magistrate, Chengalpattu, Kancheepuram District.

2. Heard the learned Senior Counsel for the petitioners and the learned Advocate General for the respondent and perused the materials available on record.

3. The respondent filed a complaint for the offences punishable under Sections 15 read with 16 and 19(a) of the Environment (Protection) Act, 1986.

4. The crux of the complaint in Crl.O.P.No.30201 of 2015 is that



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

the accused commenced its construction of Medical College and Medical

Hospital at Rathinamangalam Village, Chengalpattu Taluk,

Kancheepuram District, to develop an Educational Institution with total

built up area of more than 20,000 sq.metres. The notification issued by

the Ministry of Environment and Forest, Government of India vide its

Environmental Impact Assessment Notification, 2006 (EIA) dated

14.09.2006 mandates that on and from the date of its publication, the

required construction of its new projects or activities or expenses or the

expansion or modernization of existing projects or activities listed in the

Schedule to its notification entailing capacity addition with change in

process and or technology shall be undertaken in any part of India only

after the prior environmental clearance from the Central Government or

as the case may be, by the State Level Environment Impact Assessment

Authority (herein after called as “SEIAA”). Therefore, the construction of

Educational Institution requires prior environmental clearance which is

categorized as Category B Project as per Schedule 8(a) of the said

notification. The accused submitted its application to SEIAA on

08.10.2010 for obtaining prior environmental clearance for its project. It

was pending as on 14.03.2013. However, the accused had commenced

and made substantial progress in its construction activity without any



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

prior environmental clearance. On 11.07.2014, the respondent conducted inspection in the said project. It was found that the accused had commenced its construction activity without any prior environmental clearance. It is in violation of the notification and the accused is guilty of having committed the offence under Sections 15(1) r/w 16(1) of the Environment (Protection) Act, 1986. Therefore, SEIAA recommended to initiate prosecution as against the accused. After issuance of notice to the accused, they replied thereby admitting that they committed the offences and violated the provisions of the notification. Hence, the complaint.

5. The crux of the complaint in Crl.O.P.No.297 of 2017 is that the accused Trust commenced its construction activity of additional block for existing Educational Institution at S.F.No.1046, 1047, 1048/4B and 1234/1 of Thaiyur B Village, S.F.No.49, 68/4, 84/2A and 84/2B of Kalavakkam Village, Thiruporur Taluk, Kancheepuram District, to develop an Educational Institution with total built up area of more than 20,000 sq.metres. As per the notification issued by the Ministry of Environment and Forest, Government of India vide its Environmental Impact Assessment Notification, 2006 (EIA) dated 14.09.2006 mandates that on and from the date of its publication, the required construction of



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

its new projects or activities or expenses or the expansion or modernization of existing projects or activities listed in the Schedule to its notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority (herein after called as “SEIAA”). Therefore, the construction of additional blocks requires prior environmental clearance which is categorized as category B Project as per Schedule 8(a) of the said notification. The accused in Crl.O.P.No.297 of 2017 submitted its application to SEIAA on 24.11.2011 for obtaining prior environmental clearance for its project. It was pending as on 06.12.2013. However, the accused had commenced and made substantial progress in its construction activity without any prior environmental clearance. On 15.07.2014, the respondent conducted inspection in the said project. It was found that the accused had commenced its construction activity without any prior environmental clearance. It is violation of the notification and the accused is guilty of having committed the offence under Sections 15(1) r/w 16(1) of the Environment (Protection) Act,1986. Therefore, SEIAA recommended to initiate prosecution as against the accused. After issuance of notice to the



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

accused, they replied thereby admitting that they committed the offences and violated the provisions of the notification. Hence, the complaint.

6. Mr.S.Ashok Kumar, learned Senior Counsel appearing for the petitioners in Crl.O.P.No.30201 of 2015 and Mr.Srinath Sridevan, learned Senior Counsel appearing for the petitioners in Crl.O.P.No.297 of 2017 submitted that by the Office Memorandum dated 09.06.2015, it was clarified with regards to existing notification No.S.O.3252 (E) dated 22.12.2014, on applicability of Environment clearance. Accordingly, Forest and Climate change has exempted the school, college and hostel for educational institution from obtaining prior environmental clearance under the provisions of the Environmental Impact Assessment Notification, 2006 (EIA) dated 14.09.2006 subject to Sustainable Environmental Management. Subsequently, by the Office Memorandum dated 19.05.2022, it was further clarified with regard to applicability of SEIAA notification for educational institutions. Accordingly, exemption provided for educational institutions by the Ministry's Notification No.S.O.3252 (E) dated 22.12.2014 shall be applicable to all educational institutions covered under the definition of educational institution as mentioned in Noise Pollution (Regulation and Control) Rules, 2000.



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

WEB COPY

7. As per the clarification, a proposal was placed in the 408th meeting of Sectoral Expert Appraisal Committee. In the meeting, as per the revised application submitted by the petitioners in Crl.O.P.No.297 of 2017, a sum of Rs.14,32,25,000/- was imposed as compensation, to be remitted in the form of bank guarantee to Tamil Nadu Pollution Control Board, before obtaining environmental clearance and submit the acknowledgment of the same to SEIAA. Accordingly, the petitioners in Crl.O.P.No.297 of 2017 submitted a bank guarantee on 18.10.2023 to the tune of Rs.14,32,25,000/-. It was duly acknowledged by the Chairman, Tamil Nadu Pollution Control Board, Chennai, on 30.10.2023.

8. As far as the petitioners in Crl.O.P.No.30201 of 2015 are concerned, the Committee decided to recommend a proposal to SEIAA for grant of post construction environmental clearance subject to the condition that they shall remit a sum of Rs.1,21,92,000/- in the form of bank guarantee to Tamil Nadu Pollution Control Board. Accordingly, they also had taken bank guarantee and submitted before the Tamil Nadu Pollution Control Board.



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

WEB COPY

9. Therefore, the only issue to be considered in these petitions is whether the petitioners can be prosecuted when their project had been accorded prior environmental clearance subject to their payment of compensation?

10. The learned Advocate General appearing for the respondent submitted that subsequent grant of environmental clearance would not absolve the offences committed by the petitioners. Admittedly, the petitioners had commenced the construction without prior environmental clearance. In fact, their applications were pending. Subsequently, they obtained environmental clearance, on payment of compensation.

11. In this regard, the learned Senior Counsel appearing for the petitioners in both the petitions relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2022 7 MLJ 497 (SC)** in the case of ***D.Swamy Vs Karnataka State Pollution Control Board and others***, wherein the Hon'ble Supreme Court of India held as follows:-



WEB COPY



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

“41. The EP Act does not prohibit ex post facto Environmental Clearance. Grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

*44. Even though this Court deprecated ex post facto clearance, in **Alembic Pharmaceuticals Ltd. Vs. Rohit Prajapati and others** (supra), this Court did not direct closure of the units concerned but explored measures to control the damage caused by the industrial units. This Court held:-*

“However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court.””

12. Therefore, the Environmental Protection Act does not prohibit *ex post facto* Environmental Clearance. Similarly, the grant of *ex post facto* environmental clearance in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. As per the notification and subsequent clarification, the Committee decided and granted environmental clearance subject to the



payment of compensation.

WEB COPY

13. They also relied upon the Judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.4795 of 2021 dated 25.03.2022*** in the case of ***Pahwa Plastics Pvt. Ltd and others Vs Dastak NGO and others***, wherein it was held as follows:-

“63. Ex post facto environmental clearance should not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of ex post facto approval outweigh the consequences of regularization of operations by grant of ex post facto approval, and the establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. The deviant industry may be penalised by an imposition of heavy penalty on the principle of ‘polluter pays’ and the cost of restoration of environment may be recovered from it.

64. The question in this case is, whether a unit contributing to the economy of the country and providing livelihood to hundreds of people, which has been set up pursuant to requisite approvals from the concerned statutory authorities, and has applied for ex post facto EC, should be closed down for the technical irregularity of want of prior environmental clearance, pending the issuance of EC, even though it may not cause pollution and/or may be found to comply with the required norms. The answer to the aforesaid question has to be in the negative, more so when the HSPCB was itself under the misconception that no environment clearance was required for the units in question. HSPCB has in its counter affidavit before the NGT clearly stated that a



WEB COPY



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

decision was taken to regularize units such as the Apcolite Yamuna Nagar and Pahwa Yamuna Nagar Units, since requisite approvals had been granted to those units, by the concerned authorities on the misconception that no EC was required.

65. It is reiterated that the 1986 Act does not prohibit ex post facto EC. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in Electrosteel Steels Limited (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units in their survival.

66. Ex post facto EC should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations. This Court is of the view that the NGT erred in law in directing that the units cannot be allowed to function till compliance of the statutory mandate.

67. Accordingly, the appeal is allowed. The impugned order is set aside in so far as the same is applicable to the units of the Appellants established and operated pursuant to CTE and CTO from the HSPCB in respect of which applications for ex post facto EC have been filed. The Respondent shall take a decision on the applications of the Appellants for EC in accordance with law within one month from date. Pending decision, the operation of the Pahwa Yamuna Nagar Unit and the Apcolite Yamuna Nagar Unit, in respect of which consents have been granted and even public hearing held in connection with grant of EC, shall not be interfered with."

14. The petitioners, being the Educational Institutions, are entitled

to get the benefit of exemption from obtaining the environmental



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

clearance for the buildings constructed even before the notification No.S.O.3252 (E) dated 22.12.2014 and the subsequent notification dated 19.05.2022.

15. In view of the above, the entire proceedings cannot be sustained as against the petitioners and are liable to be quashed. Accordingly, the proceedings in C.C.Nos.348 and 350 of 2015 pending on the file of the learned Chief Judicial Magistrate, Chengalpattu, Kancheepuram District, are hereby quashed.

16. In the result, these Criminal Original Petitions are allowed. Consequently, connected Miscellaneous petitions are closed.

02.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn

G.K.ILANTHIRAIYAN. J.

mn

To



Crl.O.P.Nos.30201 of 2015 and 297 of 2017

WEB COPY

1. The Chief Judicial Magistrate, Chengalpattu, Kancheepuram District.
2. Mr. R.Kannan,
The District Environmental Engineer,
The Tamil Nadu Pollution Control Board,
Maraimalai Adigalar Street,
Maraimalai Nagar,
Kancheepuram District.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.Nos.30201 of 2015 and 297 of 2017

02.11.2023