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W.P.No.11630 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM:

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.11630 of 2022

EICL Ltd.,
(Formerly known as “English Indian Clays Ltd.”)
represented by its Authorized Signatory
Mr.Manoj Pillai
Thonakkal P.O.,
Thiruvananthapuram
Kerala 695 317 .. Petitioner

v.

1. The National Green Tribunal (Southern Zone)
Kalas Mahal, Chennai
Tamil Nadu 600 014
2. K.Maheshwaran
3. State of Kerala
represented by its Secretary
Department of Industries & Commerce
Secretariat, Thiruvananthapuram 695 001
4. Kerala State Environment Impact Assessment Authority
represented by its Member secretary



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Pettah, Pallimukku P.O.,
Thiruvananthapuram 695 024

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5. The Director

Directorate of Environment & Climate Change
Pettah, Pallimukku PO.,
Thiruvananthapuram 695 024

6. The District Collector

Thiruvananthapuram, Collectorate
Thiruvananthapuram 695 024

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Prohibition, prohibiting the first respondent herein from proceeding further in the proceedings arising out of Original Application No.41 of 2017 (SZ) in the files of the first respondent till the petitioner's application for grant of environmental clearance dated 25.08.2021 is processed by the competent authority.

For Petitioner :: Mr.P.Wilson
Senior Counsel for
Mr.Rajnish Pathiyil

For Respondents :: R1-Tribunal
Mr.A.Yogeshwaran for R2
Mr.E.K.Kumaresan for R3, R5, R6
Mr.S.Saravanan for R4

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

The above writ petition is filed for issuance of a writ of prohibition prohibiting the first respondent, namely, the National Green Tribunal



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(Southern Zone) from proceeding further in the proceedings arising out of

Original Application No.41 of 2017 (SZ) in the files of the first respondent till the petitioner's application for grant of environmental clearance dated 25.08.2021 is processed by the competent authority.

2. The petitioner is engaged in the mining and processing of kaolin clay. It is not necessary to go in detail about the industrial operation of the petitioner. The second respondent herein has filed an application before the first respondent in Application No.41 of 2017, for the following reliefs:-

“(i) Declare that the 5th respondent is not entitled to obtain ex post facto environmental clearance for their mining project on the basis of Annexure A4 lease order, which involves violation of the provisions of Environment (Protection) Act, 1986.

(ii) Direct the 2nd respondent to reject Annexure A1 application preferred by the 5th respondent by delisting the same.

(iii) Direct the 4th respondent to take steps to initiate cognizance against the 5th respondent for violation of the Environment (Protection) Act, 1986.

(iv) Direct the respondent No.1, 3 & 4 to ensure that no mining activities is conducted by the 5th respondent on the basis of



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Annexure A4 lease order in violation of the provisions of the EIA Notification, 2006.

(v) Direct the 3rd respondent to constitute an expert committee to assess the quantum of environmental damage in terms of money caused by the 5th respondent and recover the same from the 5th respondent.”

3. Aggrieved by the application being filed by the second respondent before the first respondent, the above writ petition is filed by the petitioner for the relief stated above, mainly on the ground that the application to be considered by the first respondent would be in excess of its jurisdiction and such exercise of power would be violative of Articles 14 and 19(1)(g) of the Constitution of India.

4. Even though the petitioner has raised a specific ground that the first respondent has no jurisdiction, this Court is unable to find any legal ground or heard a submission which would prompt this Court to hold that the first respondent has no jurisdiction to decide the application, having regard to the facts stated in the application filed by the second respondent.



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The grievance of the petitioner appears to be that ex post facto environmental clearance for the petitioner can be given in view of the judgment of the Hon'ble Supreme Court and the first respondent Tribunal may not be in a position to appreciate the merits of the petitioner's contentions, in view of the interim order granted by the Hon'ble Supreme Court in W.P.(C)No.1394 of 2023 (Vanashakti v. Union of India), wherein the Hon'ble Supreme Court has stayed the operation of the Office Memoranda dated 07.07.2021 and 28.01.2022 issued by the Ministry of Environment, Forest and Climate Change, which enables the petitioner to seek ex post facto environmental clearance for the petitioner. The petitioner, who admits the position that the industry has not obtained environmental clearance, seeks indirectly stay of proceedings before the Tribunal on untenable grounds.

5. In our considered opinion, issues raised by petitioner can be adjudicated by the National Green Tribunal, which is competent to decide all issues relating to environment. This Court is fully convinced that the petitioner has not raised even a single ground, on which this Court could



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hold that the Tribunal is lacking jurisdiction to decide the issues raised by the second respondent in his application. Since the first respondent Tribunal being the adjudicatory authority to deal with these kind of issues, this Court cannot entertain the prayer for issuance of a writ of prohibition prohibiting the first respondent from dealing with the application of the second respondent, which need to be decided on merits and in accordance with law. Entertaining this writ petition would only have an adverse impact and would defeat the very purpose of constitution of the National Green Tribunal. Therefore, leaving it open to the petitioner to raise all factual and legal issues in the Application No.41 of 2017 filed by the second respondent to be decided on merit and in accordance with law by the first respondent, this writ petition stands disposed of. Consequently, interim order stands vacated and the W.M.P.Nos.11103 of 2022, 2885 & 2894 of 2023 are closed. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (N.S.,J.)
16.04.2024

SS



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To

1. The Registrar
National Green Tribunal (Southern Zone)
Kalas Mahal, Chennai 600 014
2. The Secretary to Government of Kerala
Department of Industries and Commerce
Secretariat, Thiruvananthapuram 695 001
3. The Member Secretary
Kerala State Environment Impact Assessment Authority
Pettah, Pallimukku P.O.,
Thiruvananthapuram 695 024
4. The Director
Directorate of Environment and Climate Change
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5. The District Collector
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S.S.SUNDAR,J.

AND

N.SENTHILKUMAR,J.

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