

127(5) **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date reserved on:-01.02.2024
Date of Pronouncement:- 21.02.2024

1. CRM-M-64644-2023

Haryana State Pollution Control BoardPetitioner..

vs.

M/s Spaze Towers Pvt. Ltd. and othersRespondents.

2. CRM-M-155-2024

Haryana State Pollution Control BoardPetitioner..

vs.

M/s Spaze Towers Pvt. Ltd. and othersRespondents.

3. CRM-M-163-2024

Haryana State Pollution Control BoardPetitioner..

vs.

M/s Spaze Towers Pvt. Ltd. and othersRespondents.

4. CRM-M-293-2024

Haryana State Pollution Control BoardPetitioner..

vs.

M/s Spaze Towers Pvt. Ltd. and othersRespondents.

5. CRM-M-305-2024

Haryana State Pollution Control BoardPetitioner..

vs.

M/s Spaze Towers Pvt. Ltd. and othersRespondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

CRM-M-64644-2023

and other connected cases

Present: Mr. Pawan Girdhar, Advocate,
for the petitioner.

HARKESH MANUJA J. (Oral)

1. This common judgment of mine shall dispose of above mentioned five petitions as they all involve common question of law and fact. For convenience, the facts are being taken from CRM-M-64644-2023.

2. By way of present petition filed under Section 482 Cr.P.C., challenge has been laid to an order dated 06.10.2022 passed by the Court of Sessions Judge, Faridabad, whereby revision petition filed at the instance of private respondents, assailing the summoning order dated 29.01.2020 (Annexure P-2) passed against them by learned Presiding Officer-cum-JMIC, Special Environment Court, Faridabad (for short "Environment Court), in terms of Section 15 of the Environment (Protection) Act, 1986, (for short, "1986 Act") stood allowed, thereby resulting into dismissal of Complaint No.27 of 2019 dated 14.05.2019 (Annexure P-1), filed at the instance of petitioner, against the private respondents.

3. Necessary facts leading to the present petition(s) are as follows:-

(i) Respondent No.1 is a construction company and respondents No.2 to 7 are its authorized Directors whereas respondent No.8 is its signatory. In October 2010, respondent No.1 launched a commercial project in the name of "Spaze Boulevard-I" (herein after referred to as the "project") over an area measuring 2.85 acres, Sector 47, Gurugram.

(ii) On 01.12.2010, an application for environment clearance for the project was filed before the Environment Impact

Assessment Authority (SEIAA), in terms of notification dated 19/14.09.2006 issued by the Ministry of Environment and Forests, Govt. of India, in exercise of its powers under sub-rule (3) to Rule 5 of Environment (Protection), Rules, 1986, which was in vague at that time. The said notification imposed certain restriction & prohibition on the new project or activities based on their potential environmental impacts.

(iii) As the construction was started by the respondents, before obtaining environment clearance, the project as such was declared as a case of violation by the petitioner, on 19.09.2013.

(iv) On 18.07.2016, site inspection of the project was carried out by the officials of petitioner. As the construction activity was going on without obtaining prior environment clearance, therefore, a show cause notice dated 20.07.2016 was issued by the petitioner-department to the respondents, in terms of Section 15 of the 1986 Act.

(v) On 14.03.2017, Central Govt. through Ministry of Environment, Forest and Climate Change, Government of India, New Delhi (for short, "MOEFCC), issued another notification in exercise of its powers under Section 3 of the 1986 Act for appraisal of the projects and for grant of terms of Reference and Environment Clearance, which have started the work on site, without obtaining prior environment clearance under the Environment Impact Assessment Notification, 2006 and to establish a process for grant of environment clearance in the case of violation and to bring all the entities not complying with environment regulation under the Environment Impact Assessment Notification, 2006, under compliance within the environmental laws in expedient manner.

On 09.05.2017, respondent No.1 applied for Environment Clearance under the notification dated 14.03.2017 and the same remained pending consideration.

(iv) On 07.06.2018/18.10.2018, simultaneously Central Govt. recommended launch of prosecution against respondents, in terms of Section 15 of the 1986 Act.

4. On 14.05.2019, Haryana State Pollution Control Board, itself under its delegated powers, derived from the Central Government in terms of Section 19 of the 1986 Act, filed complaint through its authorized officer, against respondents for alleged violation of Section 15 of the 1986 Act for having set up the commercial project without obtaining prior Environment Clearance.

5. On 29.01.2020, Environment Court, issued summoning order against the respondents so as to face trial under Section 15 of the 1986 Act with the following observations:-

“I have gone through the facts of the complaint and I have heard learned counsel for the complainant. Annexure-C1 agenda item no.135.7., Annexure-C2 agenda item no. 135.8., Annexure-C3 minutes of the 135th meeting. Annexure-C4 Notification, Annexure-C5 posting order of Kuldeep Singh. Annexure-C6 & Annexure-C6A status of accused, Annexure-C7 Notification dated 27.01.1994, Annexure-C-8 Notification dated 07.07.2004, Annexure-C9 Notification dated 14.09.2006, Annexure-C10 public notice, Annexure-C11 copy of registered sale deed, Annexure-C12 copy of agreement, Annexure-C13 letter dated 07.06.2018 of MOEF, Annexure-C14 copy of minutes of 4th meeting. Annexure-C15 spot inspection report dated 18.07.2016. Annexure-C16 spot inspection report dated 09.08.2018, Annexure-

C16A Show cause notice dated 10.08.2018, Annexure-C17 letter of accused, Annexure-C18 reply dated 11.08.2018 of the unit. Annexure-C19 show cause notice dated 05.10.2018, Annexure-C20 reply dated 06.10.2018 of the unit. Annexure-C21 prosecution sanction letter dated 18.10.2018, Annexure-C22 copy of letter dated 27.07.2013 and copy of affidavit dated 27.07.2013 and Annexure-C23 show cause notice dated 15.04.2019. After going through the above mentioned documents-annexures, this court is of the considered opinion that these documents are sufficient to prima-facie summon the accused for running the unit without taking mandatory environment clearance and as such it is not desirable to postpone the issue of process against the accused and direct investigation by a police official, as these documents are sufficient to prima-facie show the allegations of complainant and further the firm is situated in Gurugram, hence, process been under Section 202 of Cr.P.C is not required. Thus, prima-facie it has established that accused no.1 & 2 companies and its Directors/MD/Secretaries accused no.3 to 14 have committed an offence by violating the provisions of the EP Act as the accused no.3 has not obtained any Environment Clearance, NOC or prior consent to raise the construction of the building in Gurugram under EP Act and he is directly responsible for its activity. Thus a preliminary case against accused no.1 to 14 under Section 15 of The EP Act has made out and the accused no.1 to 14 are liable to be summoned for 03.03.2020 to face trial under Section 15 of the EP Act”.

6. On 05.02.2020, upon consideration of application dated 09.05.2017 made by respondent No.1, in terms of notification dated 14.03.2017, the Central Govt. through MOEFCC granted “Environment Clearance Certificate” in its favour though subject to compliance of Standard Environment Clearance conditions and Remediation plan, against deposit of Rs.1,66,27,700/- in the shape of bank guarantee.

7. Simultaneously, respondents challenged the summoning order dated 29.01.2020 by way of revision which was allowed by the Revisional Court vide its order dated 06.10.2022, resulting into dismissal of complaint. While passing the said order, the primary reliance was placed upon the order dated 05.02.2020 whereby environment clearance was granted in favour of respondent No.1 by MOEFCC.

8. By way of present petition, while impugning the order dated 06.10.2022, learned counsel for the petitioner submits that as per the averments made in the complaint, the construction activities by the respondents, in the name of project over an area measuring 2.85 acres at Sector 47 Gurugram came to be commenced in October, 2010 i.e. post notification dated 14.09.2006 issued by the Central Government and that too without obtaining any prior environment clearance either from the Central Government or State Level Environment Impact Assessment Authority.

(8.1) It was further pointed out that as per the spot inspection report dated 18.07.2016, repeated show cause notices were served upon the respondents, followed by filing of complaint in question. It has also been pointed out that as per Section 19 of the 1986 Act, the cognizance of offence under Section 15 thereof can be taken on the complaint made by the Central Government or any authority or officer authorized in this behalf by that Government.

It has been submitted that in terms of Clause (a) to Section 19 of the 1986 Act, the Central Government, vide its notification dated 08.03.2017, has authorized the regional offices of the State Pollution Control Board for filing of complaints under Section 15 of the 1986 Act and the

relevant extract therefrom is reproduced hereunder:-

“OFFICERS AUTHORISED FOR TAKING COGNIZANCE OF OFFENCES

S.O.394(E).-In exercise of the powers conferred under clause (a) of Section 19 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby authorises the officers and authorities listed in column (2) of the Table hereto for the purpose of the said Section with the jurisdiction mentioned against each of them in column (3) of that table:

Table

Serial No.	Officer	Jurisdiction
1.	xxxx	xxxx
2.	xxxx	xxxx
3.	xxxx	xxxx
4.	xxxx	xxxx
5.	xxxx	xxxx
6.	xxxx	xxxx
7.	Regional Officers of the State Pollution Control Board who have been delegated powers under sections 20, 21 and 23 of the Water (Prevention and Control of Pollution) Act, 1974	Area as laid down by the State Board
8.	Regional Officers of the State Pollution Control Board who have been delegated powers under section 24 of the AIR (Prevention and Control of Pollution) Act, 1981	Area as laid down by the State Board

Learned counsel thus submits that the Regional Officer, Gurugram was duly competent to file and maintain the complaint for the offence punishable under Section 15 of the 1986 Act against the respondents. It has been further pointed out that complaint in the present case against the alleged violation of having raised construction without obtaining the prior environmental clearance was filed against respondents on 14.05.2019 whereas, the environment clearance was obtained by them for the project from the Central Government on 05.02.2020, based on

subsequent notification dated 14.03.2017 issued by the MOEFCC and as such, once an offence already stood committed in terms of Section 15 of the 1986 Act, on the date of filing of the complaint, any subsequent approval as regards the environment clearance could not have come to the rescue of the respondents.

(8.2) It has also been submitted that the Revisional Court went beyond the scope of its jurisdiction while relying upon the notification dated 14.03.2017 as well as the order dated 05.02.2020 which was never part of the records of the trial Court and thus, could not have been considered. Although the notification dated 14.03.2017 has been placed on record as Annexure P-3 (Page-67 of the present paper-book); a copy of approval dated 05.02.2020 has been handed over in the Court at the time of hearing and the same is taken on record as Mark-X. Be tagged at appropriate place.

(8.3) Learned counsel for the petitioner has also placed reliance upon the following judgments:-

- (i) *Amit Kapoor vs. Ramesh Chander and another, 2012(4) RCR (Criminal) 377.*
- (ii) *Chandra Babu @ Moses vs. State through Inspector of Police (SC)*
- (iii) *D. Swamy vs. Karnataka State Pollution Control Board and others, 2022 (13) Scale 690.*

9. Heard learned counsel for the petitioner and gone through the paper book. I am unable to find substance in the submissions made on behalf of the petitioner.

10 In the present case, the cause of action in favour of the petitioner, enabling it to file the complaint about the alleged violation of Section 15 of the 1986 Act, revolves around the notification dated

14.09.2006, issued by Central Govt. through MOEFCC in exercise of its powers under Section 3 of the 1986 Act. This notification required the projects of the category of respondent No.1 to obtain prior environment clearance and in case of violation, making them liable to be prosecuted under Section 15 read with Section 19 of the 1986 Act. Sections 3(1), 15 & 19 of the 1986 Act, which are relevant for the discussion read as under:-

“Section 3(1): *Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.....*

Section 15:- PENALTY FOR CONTRAVENTION OF THE PROVISIONS OF THE ACT AND THE RULES, ORDERS AND DIRECTIONS.- *(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. (2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.*

Section 19: COGNIZANCE OF OFFENCES.- *No court shall take cognizance of any offence under this Act except on a complaint made by-- (a) the Central Government or any authority or officer authorised in this behalf by that Government¹, or (b) any person*

who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.”

As per the statutory provisions reproduced here-in-above, Section 3(1) of the 1986 Act enables the Central Govt. to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution. No doubt, the notification dated 14.09.2006, required the project established by respondent No.1 to obtain prior environment clearance before its setting up, however, it may be important to point out here that the later notification dated 14.03.2017 was also issued in exercise of Section 3 of 1986 Act with the object and purpose in mind to take corrective measure and to afford an opportunity to those who did not obtain prior permission. Thus, the ultimate object was to make violators take all remedial steps by preparing “Remediation Plan” under the supervision of “Specialized Expert Appraisal Committee” of the respective Sector so as to become complaint.

11. In the given facts and circumstances, it is important to note that the moment respondent No.1 got fresh opportunity under notification dated 14.03.2017 so as to correct itself, an application dated 09.05.2017 was submitted in this regard, within the prescribed time period, which remained under consideration with the concerned authorities and the “Expert Appraisal Committee” for preparation of “Remediation Plan” as well as the assessment towards its cost. Finally the environment clearance was granted

in favour of respondent No.1 vide letter dated 05.02.2020 in terms of “Remediation Plan” approved by the “Expert Appraisal Committee” and respondent No.1 deposited the requisite bank guarantee of Rs.1.6 crore towards the same. There was no case set up either before the first Revisional Court or even in the present petition that the necessary steps towards the “Remediation Plan” were not being undertaken by respondent No.1 and as such, the continuation of criminal prosecution of respondent No.1 would amount to total abuse of process of law. In fact, the purpose & object of the notification dated 14.09.2006, which primarily was to protect, improve and control the environment protection was achieved and as such its contravention if any was remedied with having adopted the corrective measures and thus the filing of complaint & passing of summoning order lost its object. Under somewhat similar circumstance Madras High Court in case of **“M/s Voorna Property Developers Pvt. Ltd and another vs. The Tamil Nadu Pollution Control Board”**, Crl. O.P. No.14657-2021 and Crl. M.P.Nos.7984 and 7986 of 2021, quashed the complaint filed at the instance respondent- Tamil Nadu Pollution Control Board. Relevant portion is reproduced as under:-

“.....The above observations squarely apply to the facts of the instant case. This Court is of the view that the said circular, which states that if the findings of SEAC are in favour of the project Proponent and they had paid the compensation, then their prosecution does not arise, is applicable to all constructions. In the case of B Category Projects, it applies to violations whether it is made at the initial stage or while there is an expansion in this project. The observation of this Court extracted above does not suggest that there is any distinction between a violation in the

construction made initially and that which is made while there is an expansion in the project. Thus, this Court is of the view that the impugned complaint is liable to be quashed.”

12. Further, a conjoint reading of clauses 2 & 3 of notification dated 14.03.2017 makes it clear that the action under Section 19 of the 1986 Act was required to be taken only, till the project was granted environment clearance. The said clauses 2 and 3 are reproduced hereunder:-

Clause (2):- In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment -Notification, 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product-mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-Section (3) Section 3 of the Environment (Protection), 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level.

Clause (3):- *In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of Section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.”*

On a plain reading of clause (3), one can find that the effect of notification dated 14.03.2017 was that till any project being covered under it

was granted environmental clearance, the same was to face the following consequences being the case of violation:-

- (a) action under Section 19 of the 1986 Act against the project proponent;
- (b) no consent to operate;
- (c) no occupancy certificate to be issued to the project;

However, in the given facts, once the environmental clearance was granted to the project-respondent No.1 by the competent authority i.e. Central Govt. through MOEFCC, in exercise of powers under notification dated 14.03.2017, vide its order dated 05.02.2020, the continuation of complaint was totally against the object, purpose and spirit of the same and was thus, wholly uncalled for.

13. Under 1986 Act, as per Section 19(a) thereof, no Court can take cognizance of any offence except on a complaint made by the Central Government or any authority or officer authorized on its behalf by Government. In the present case, complaint has been filed by the petitioner i.e. Haryana State Pollution Control Board or through its authorized officer (Regional Officer) while relying upon the delegation/authority conferred upon it by Central Government.

In the facts and circumstances of the present case, once the Central Government itself being the competent authority, in terms of notification dated 14.03.2017 has granted the environmental clearance by taking all remedial measures in the shape of preparation of remediation plan through the Specialized Expert Appraisal Committee, the continuation of complaint at the hands of petitioner for the alleged violation of Section 15 read with Section 3 of the 1986 Act would clearly amount to misuse of the

powers conferred upon the petitioner, who happens to be a mere delegate through the Central Government. Moreover, in the case in hand, respondent No.1 is not a rank violator, who never intended to obtain environmental clearance, rather, an application dated 01.12.2010 was submitted by respondent No.1 for the aforesaid purpose, somehow, the same could not be proceeded further on account of construction having been started before obtaining the environmental clearance by declaring it to be a case of violation vide communication dated 19.09.2013.

14. Further, the judgments cited on behalf of the petitioner are not applicable to the facts and circumstances of the present case for the following reasons:-

(i) In **Amit Kapoor's** case (supra), the exposition relates to simultaneously continuation of civil & criminal proceedings and thus, has no application to the case in hand;

(ii) **Chandra Babu @ Moses's** case (supra), relates to the scope of revisional powers/jurisdiction under Sections 397/401 of the Code of Criminal Procedure, 1973, wherein, it has been laid down that the same should be exercised on a question of law and the factual appreciation can be done only in case of findings being perverse, however, at the same time, it also lays down that the powers is required to be exercised so that justice is done and there is no abuse of powers by the Court, thus, rather than helping the petitioner, the case law supports the cause of respondents;

(iii) **D.Swamy's** case (supra) primarily relates to the grant of ex-post facto environmental clearance. Though, having no strict

applicability to the facts and circumstances of the petition in hand, yet, the exposition, to some extent supports the respondents while holding that 1986 Act does not prohibits ex-post facto environmental clearance in accordance with law, in strict compliance with rules, regulations, notifications or applicable orders in appropriate cases.

15. Last but not the least, in the humble opinion of this Court, no merits can be found in the submissions made on behalf of the petitioner to the fact that the environmental clearance accorded in favour of respondent No.1 vide order dated 05.02.2020, which never formed part of the records before the Environment Court, could not have been considered by the first Revisional Court. Undoubtedly, the order dated 05.02.2020, granting environmental clearance in favour of respondent No.1 been passed by the competent authority was duly conveyed to the Secretary, Directorate of Environment, Government of Haryana, besides the Member Secretary, Haryana State Pollution Control Board and thus, always formed part of records maintained by the petitioner itself. In any case, the petitioner was not taken by surprise in any manner with the reliance of the order dated 05.02.2020, especially when no dispute was raised about its validity or genuineness and thus, the first Revisional Court was well within its jurisdiction to rely upon the same while passing the impugned order. Rather, on the other hand, the petitioner being a public authority, immediately after having come to know about the passing of the order dated 05.02.2020 was required to bring the same on record with an idea to produce all the relevant documents before the Court concerned.

15. Resultantly, finding no illegality or perversity in the impugned order, the aforementioned 05 petition(s) are hereby dismissed.

21.02.2024

sonika

(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No