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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 18th December, 2023

Date of decision: 13th March, 2024

+ CRL.M.C. 2632/2012

THOMAS VARGHESE

..... Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate
Mr. Vikas Kakkar, Mr. Shivam
Sachdeva, Mr. Dilip Kumar Rana,
Mr. Amit Dubey and Mr. Sarthak
Dubey, Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Aman Usman, APP for State.
Mr. Balendu Shekhar, Mr. Raj Kumar
Maurya, Ms. Tanisha Samanta and
Ms. Krishna Chaitanya, Advocates for
R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeks the following prayers:

- “a) Set aside impugned order dated 15.05.2012 passed by Sh. Sanjeev Kumar, Ld. ASJ, District Court, Rohini in Crl. Revision Petition No. 21/2011 titled as Thomas Varghese Vs. Delhi Pollution Control Board.
- b) Set aside and quash the summoning order dated 06.01.2011 qua the petitioner passed by Ld. Metropolitan Magistrate District Court Rohini Delhi in CC No. 01/11 titled as Delhi Pollution Control Committee Vs. M/s Aditya Birla Retail Ltd. &Ors.



c) Pass such other and further order(s) which this Hon'ble Court deems fit and proper in the interest of justice.”

2. The brief facts, necessary for the disposal of the present petition are set out as follows:

- i. M/s Aditya Birla Retail Ltd., (hereinafter referred to as company) is duly incorporated under Indian Companies Act and has its retail stores spread all over the country. The petitioner was the CEO of the company at that time.
- ii. The respondent no. 2 i.e., Delhi Pollution Control Committee (hereinafter referred to as 'DPCC') had instituted a complaint against the petitioner, Sh. Vivek and Sh. Kapil Kumar Sharma, who were the CEO, Store In-charge and Store Manager (Finance) at that relevant point in time respectively, of the retail store named, 'More Mega Store' of company located at City Central Mall, Sector-10, Rohini, New Delhi.
- iii. It is alleged in the complaint that on 30.07.2010, DPCC conducted an inspection in the said retail store of company and found that the concerned persons were found using and were also involved in the storage of the plastic bags. Since the retail store was administered and managed by Sh. Vivek and Sh. Kapil (accused no. 3 and 4 respectively) at that relevant point in time, a complaint under Section 15, 16 and 19 of The Environment (Protection) Act, 1986 was filed by DPCC against them including the present petitioner and the company (accused no. 2 and 1 respectively) based on the inspection conducted by the former in the premises of the



concerned retail store. It is further averred in the complaint that jute bags were also found at the store but were rarely used.

iv. On 06.01.2011, the learned Metropolitan Magistrate took cognizance of the offences alleged in the complaint against the accused persons named therein, and issued summons against all the accused persons as per Section 204 of the Cr.P.C.

v. Being aggrieved by the order passed by learned Metropolitan Magistrate, the present petitioner preferred a revision petition under Sections 397 and 399 of the Cr.P.C. assailing the summoning order in Criminal Revision No. 21/2011 which was dismissed by learned ASJ *vide* order dated 15.05.2012 and the order summoning the present petitioner alongwith other co-accused persons was upheld.

vi. Thus, the present petition has been filed challenging the impugned order dated 15.05.2012 passed by learned ASJ whereby the summoning order passed by learned Metropolitan Magistrate in complaint filed by DPCC was upheld.

Submissions on behalf of the Petitioner

3. Learned Senior Counsel appearing on behalf of the petitioner, on instructions, seeks determination of the present petition primarily on the ground of non-compliance/violation of Section 19 of Environment (Protection) Act, 1986. It was submitted that learned Metropolitan Magistrate was empowered to take cognizance of offence under the said Act only on the complaint made by the Central Government or any authority or officer authorized in this behalf by that Government. Attention of this Court was



drawn to the notification dated 07.01.2009 whereby, Chairman and Member Secretary of DPCC were authorized by the Central Government to lodge the complaint under Section 19 of the Act, however, the present impugned complaint has been filed by one Shri M.S. Rawat, Assistant Environment Engineer, who admittedly, was authorized by the Chairman and Member Secretary but not by the Central Government. It was submitted that in view of the above, the cognizance taken by the learned Metropolitan Magistrate is bad in law and deserves to be quashed.

4. Reliance was placed by learned Senior Counsel on the judgment of the Hon'ble Supreme Court in **P. Pramila & Ors. v. State of Karnataka & Anr., (2015) 17 SCC 651**. It was submitted that in view of the ratio of the aforesaid judgment, the complaint filed in the present case at the instance of person not being the Chairman or Member Secretary of the DPCC is bad in law.

Submissions on behalf of the State & Respondent No. 2/DPCC

5. The submission on behalf of respondent no.2/DPCC is to the effect that the present case is at a very initial stage and the learned Metropolitan Magistrate only has to see a prima facie case i.e., the complaint and the allegations made therein for the learned Metropolitan Magistrate to take the cognizance of the offence under the complaint.

6. Reliance was placed on the judgment of **UP Pollution Control Board vs. Dr. Bhupendra Kumar Modi and Anr., (2009) 2 SCC 147 on paras 23 and 38**.

7. Learned counsel appearing on behalf of respondent no.2 relied upon minutes of the 55th DPCC Board Meeting dated 09.12.2009, which was



annexed alongwith the impugned complaint wherein in Agenda no.21 it was recorded as under: -

“Agenda No.21: Authorized to file prosecution u/s 19 of the EPA, 1986 in the court: Looking at the heavy workload of MS, DPCC and preoccupation in his / her office work, committee was informed that it is not possible to attend the court, wherein the complaints have been filed by the MS, DPCC. It was informed that in one of the district courts, Hon'ble Court allowed to represent MS through the authorized officer subject to condition. It is approved by the DPCC. Committee authorized ALO / Concerned counsel to be present in the court on behalf of MS, DPCC from this, in future the Committee authorized concerned area AEE to file complaints before the court under Environment (Protection) Act 1986.”

8. Learned counsel submitted that in view of the above, the Board had delegated the power to ALO/concerned counsel to be present in the Court on behalf of Member Secretary, DPCC and also authorized concerned areas' AEE to file complaint under the Act.

9. Reliance was also placed by learned counsel on judgment of **Gujarat Pollution Control Board v. Nicosulf Industries & Exports Pvt. Ltd. & Ors., (2009) 2 SCC 171**. Reliance on the aforesaid judgment was placed to demonstrate that in the aforesaid case the Hon'ble Supreme Court while interpreting Section 49 of the Water (Prevention and Control of Pollution) Act, 1974 held that “sanction to file a complaint under the said Act would be in law an authorization to file the complaint and the authorization/sanction would be valid if given by the State Board”.

10. Reliance was placed on **Indra Kumar Patodia v. Reliance Industries Limited & Ors., (2012) 13 SCC 1** and **MMTC Ltd. & Anr. v. Medchl Chemicals & Pharma (P) Ltd., (2002) 1 SCC 234** to submit that even if the



authorization is not there in the beginning the same can be rectified at any subsequent stage of the proceedings. Reliance was also placed on **State of Bihar & Ors. v. Shyama Nandan Mishra and U.P. Pollution Control Board vs. Mohan Meakins Ltd. & Ors., (2000) 3 SCC 745.**

11. Learned APP for the State placed reliance on the judgment of the Hon'ble Supreme Court in **Food Inspector, Health Department vs. M/s Krishna Dhaba AIR 1994 SC 664: 1995 Supreme Court Cases (Cri) 172, Arvindbhai Motibhai Patel vs. Hargovind Parshottam Patel and Anr. AIR 1971 Guj 20.**

Analysis and Findings

12. Heard learned counsel for the parties and perused the record.

13. Sections 19 and 23 of The Environment (Protection) Act, 1986 (hereinafter referred to as 'Act') provides as under: -

“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 Government; 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.

23. Power to delegate.—Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act [except the power to constitute an authority under sub-section (3) of section 3 and to make rules under section 25] as it may deem necessary or expedient, to any officer, State Government or other authority.”



14. The notification in respect of Section 19 of the Act, which was annexed with the complaint provides as under: -

रजिस्ट्री नं. डी.एल.—33002/99	भारत सरकार GOVERNMENT OF INDIA	REGISTERED No. D.L.—33002/99
 दिल्ली राजपत्र Delhi Gazette असाधारण EXTRAORDINARY प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY		
सं. 2] No. 2]	दिल्ली, बुधवार, जनवरी 7, 2009/वीस 17, 1930 DELHI, WEDNESDAY, JANUARY 7, 2009/PAUSA 17, 1930	[न.रा.रा.क्षेत्र. सं. 282 [N.C.T.D. No. 282
भाग—IV PART—IV		
राष्ट्रीय राजधानी राज्य क्षेत्र, दिल्ली सरकार GOVERNMENT OF THE NATIONAL CAPITAL TERRITORY OF DELHI		
पर्यावरण, वन एवं अन्य जीव विभाग अधिसूचना दिल्ली, 7 जनवरी, 2009		
सं. फा. 08(86)/ईए/पर्या./2008/9473.—दिनांक 10-9-1992 की अधिसूचना संख्या पु-11030/नं/91-पूरीएल की राज राजित पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा रीट पाबिका (सी) संख्या 2004 का 6456 में दिनांक 7 अगस्त, 2008 के माननीय उच्च न्यायालय दिल्ली के आदेश के अनुपालन में राष्ट्रीय राजधानी क्षेत्र दिल्ली के उपराज्यपाल एकद्वारा निम्नलिखित निर्देश देते हैं :		
2. जबकि, राष्ट्रीय राजधानी क्षेत्र दिल्ली में निम्नलिखित स्थानों के संबंध में समस्त प्रकार की प्लास्टिक की थैलियों के प्रयोग, बिछाने एवं भंडारण पर प्रतिबंध है, अर्थात् :—		
(क) संचालन एवं आरक्षण होटल (ख) 100 अथवा इससे अधिक बिस्तरों वाला अस्पताल, जैव चिकित्सा अभिशष्ट (प्रबंधन एवं संचालन) नियमावली, 1998 के अर्धीय अध्याधिशिष्ट प्लास्टिक की थैलियों के प्रयोग को छोड़कर ।		
(ग) समस्त रेस्टोरेंट तथा भोजनालय जिसमें 50 से अधिक व्यक्तियों के बैठने की क्षमता हो । (घ) मर डेरी की समस्त फल एवं सब्जी दुकानें । (ङ) समस्त शाण की दुकानें । (च) समस्त सॉपिंग मॉल । (छ) मुख्य बाजारों तथा स्थानीय खरीदारी केंद्रों की समस्त दुकानें । (ज) अतिरिक्त दुकानों की समस्त खुदरा एवं थोक दुकानें जो फल एवं सब्जियों सहित विभिन्न उपभोक्ता उत्पाद बेचते हैं ।		
3. उपरोक्त स्थानों तथा स्थानीय उच्च न्यायालय दिल्ली द्वारा अनुपालित को अतिरिक्त अन्य स्थानों में केवल जैव अवक्रमित प्लास्टिक की थैलियां ही प्रयुक्त की जाएंगी । निम्नलिखित अधिकारी इन आदेशों को अपने संबंधित अधिकार क्षेत्र में क्रियान्वित करेंगे, अर्थात् :—		
1. सार्वजनिक, दिल्ली प्रमुख नियंत्रण समिति तथा उनका स्टॉक ।		
104 DG/2009	(1)	



2. निर्देशक पर्यावरण तथा वन्य पर्यावरण विभाग, राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार।
 3. अतिरिक्त निविजन मजिस्ट्रेट और उनका संबंधित जिला।
 4. उप निविजन मजिस्ट्रेट और उनका संबंधित अधिकार क्षेत्र।
 5. पर्यावरणीय अभियन्ता, दिल्ली प्रदूषण नियंत्रण समिति अपने संबंधित अधिकार क्षेत्र में।
 6. अतिरिक्त आयुक्त (एफएल), दिल्ली नगर निगम।
 7. खाद्य एवं आपूर्ति अधिकारी और उनका संबंधित अधिकार क्षेत्र।
 8. स्वास्थ्य चिकित्सा अधिकारी, नई दिल्ली नगर पालिका परिषद्।
 9. निर्देशक, स्वास्थ्य सेवाएं, राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार, दिल्ली।
 10. नगर स्वास्थ्य अधिकारी, दिल्ली नगर निगम।
 11. खाद्य निरीक्षक, खाद्य एवं अपशिष्ट विभाग, राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार, दिल्ली।
4. सदस्य सचिव, दिल्ली प्रदूषण नियंत्रण समिति उनका आदेशों को क्रियान्वित करने के लिए सह-समन्वयक के रूप में कार्य करेंगे। दिल्ली प्रदूषण नियंत्रण समिति को अध्याय तथा सदस्य सचिव को दिनांक 3-9-1996 की अधिसूचना संख्या का.आ. 624(अ) के अनुसार आगे मध्याह्न 16-4-1987 की अधिसूचना संख्या का.आ. 394(अ) के द्वारा पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 19 के अधीन शिकायत दर्ज करने के लिये प्राधिकृत किया गया है।
5. यह दिल्ली सरकार की पूर्व अधिसूचना संख्या एफ. 8(86)/ईए/पसी/2005 (II)/486 दिनांक 2 जून, 2005 तथा अधिसूचना संख्या एफ. 8(86)/ईए/पसी/2005/450, दिनांक 25 मई, 2006 के अतिरिक्त में है।
6. यह अधिसूचना सरकारी राजपत्र में अधिसूचित किये जाने की तिथि से लागू होगी।

राष्ट्रीय राजधानी क्षेत्र दिल्ली के उपराज्यपाल
के आदेश से तथा उनके नाम पर,
सुषमा वैश्य, उप-सचिव

**DEPARTMENT OF ENVIRONMENT AND FOREST
AND WILD LIFE
NOTIFICATION**

Delhi, the 7th January, 2009

No. F. 08(86)/EA/Env./2008/9473.—In exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986 read with notification No. U-11030/J/91-UTL dated 10-9-1992 and in compliance of the Hon'ble High Court of Delhi's order dated 7th August, 2008 in WP (C) No. 6456 of 2004, the Lieutenant Governor of National Capital Territory of Delhi hereby directs the following:

2. That the use, sale and storage of all kinds of plastic bags shall be forbidden in respect of the following places in the National Capital Territory of Delhi, namely:—

- (a) Five Star and Four Star Hotels.
- (b) Hospitals with 100 or more beds except for the use of plastic bags as prescribed under Bio Medical Waste (Management and Handling) Rules, 1998.
- (c) All restaurants and eating places having seating capacity of more than 50 seats.
- (d) All fruit and vegetable outlets of Mother Dairy.
- (e) All liquor vends.
- (f) All shopping Malls.
- (g) All shops in main markets and local shopping centres.
- (h) All retail and wholesale outlets of Branded chain of outlets selling different consumer products including fruits and vegetables.

3. In places other than the aforesaid places and as observed by the Hon'ble High Court of Delhi only Bio-degradable plastic bags shall be used.

The following Officers shall implement these orders in their respective jurisdiction namely:—

1. Member Secretary, Delhi Pollution Control Committee and its staff.
2. Director Environment, and staff of Environment Dept. Govt. of Delhi.
3. Additional Divisional Magistrates in their respective district.
4. Sub-Divisional Magistrates in their respective jurisdiction.
5. Environmental Engineers, Delhi Pollution Control Committee in their respective jurisdiction.
6. Asst. Commissioner (FL), Municipal Corporation of Delhi.
7. Food and Supply Officers, in their respective Jurisdiction.
8. Medical Officer Health, NDMC.
9. Director Health Services, Government of National Capital Territory of Delhi.
10. Municipal Health Officer, MCD.
11. Food Inspectors of PFA Department, Government of National Capital Territory of Delhi.

4. Member Secretary, Delhi Pollution Control Committee shall act as the co-ordinator to implement the above orders. The Chairman and Member Secretary of the Delhi Pollution Control Committee are authorised to lodge the complaint under Section 19 of the Environment (Protection) Act, 1986 vide notification No. S.O. 394(E) dated 16-4-1987 as further amended vide notification No. S.O. 624(E) dated 3-9-1996.

(emphasis supplied)



15. The notification No. S.O. 624(E) dated 03.09.1996 issued by the Central Government in exercise of the power conferred under clause (a) of Section 19 of The Environment (Protection) Act, 1986, provides as under:

THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—Sd.]

NOTIFICATION
New Delhi, the 3rd September, 1996

S.O. 624(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 amends the notification of the Government of India in the Ministry of Environment and Forests No. S.O. 394(E) dated the 16th April, 1987, published in the Gazette of India (Extraordinary) Part II, section 3, sub-section (ii) dated 16th April, 1987.

In the said notification, in the Table, after serial number 11 and entries relating thereto, the following serial number and entry shall be inserted, namely :—

Serial No.	Officer	Jurisdiction
1	2	3
"12."	Chairman or Member Secretary of the Committee notified under the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act 1981 in respect of Union Territories.	Whole of Union Territory"

[F. No. 1/24/96-PL]
VIJAY SHARMA, Jr. Secy.

Note.—Principal Notification published vide S.O. No. 394(E) dt. 16-4-87 and amended vide S.O. No. 237(E) dt. 29-3-89 and S.O. No. 656(E) dated 21-8-89.

अधिसूचना
नई दिल्ली, 3 सितम्बर, 1996

का. आ. 625(अ).—केन्द्रीय सरकार, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 6, धारा 8, धारा 25 और धारा 25 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, परिसंरक्षक अधिनियम (प्रदूषण और हानिकारक) नियम, 1989 का निम्नलिखित रूप में संशोधन करती है, अर्थात् :—

- (1) इन नियमों का संक्षिप्त नाम परिसंरक्षक अधिनियम (प्रदूषण और हानिकारक) संशोधन नियम, 1996 है।
- (2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।
- इन नियमों में, जब तक कि संदर्भ से अन्यथा अपेक्षित न हो, :—
"समिति" से संधि राज्यक्षेत्रों की बाह्य जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम, 1974 और वायु (प्रदूषण निवारण और नियंत्रण) अधिनियम, 1981 के अधीन अधिसूचित समिति अभिप्रेत है।
- परिसंरक्षक अधिनियम (प्रदूषण और हानिकारक) नियम, 1989 में :—
(1) नियम 4 के उपनियम (2) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(2) नियम 5 के उपनियम (2) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(3) नियम 5 के उपनियम (3) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(4) नियम 5 के उपनियम (4) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(5) नियम 5 के उपनियम (7) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(6) नियम 6 के उपनियम (1) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(7) नियम 6 के उपनियम (2) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(8) नियम 9 के उपनियम (2) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(9) नियम 10 में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(10) नियम 11 के उपनियम (1) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(11) नियम 11 के उपनियम (4) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;
(12) नियम 11 के उपनियम (5) में, "राज्य प्रदूषण नियंत्रण बोर्ड" के स्थान पर "राज्य प्रदूषण नियंत्रण बोर्ड या समिति" रखा जाएगा;

(emphasis supplied)



16. The Hon'ble Supreme Court in **P. Pramila And Others v. State of Karnataka, (2015) 17 SCC 651**, while interpreting similar provisions envisaged under Section 43 of The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'Air Act'), has observed and held as under,

"4. During the course of hearing, the learned counsel for the appellants invited our attention to the fact that cognizance of an offence could be taken only by the Board or an officer authorised by the Board in terms of Section 43 of the Air Act. Section 43 aforementioned was the primary basis of the challenge raised before us. The same is being reproduced hereunder:

"43.Cognizance of offences.—(1) No court shall take cognizance of any offence under this Act except on a complaint made by—

(a) a Board or any officer authorised in this behalf by it; 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 Board or officer authorised as aforesaid, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest."

5. Our attention has been pointedly invited to sub-section (1) of Section 43 of the Air Act. Having perused the same, there cannot be any doubt, that when the authorities decided to initiate proceedings under the provisions of the Air Act, the complaint could have been made either by the Board or by an officer authorised by the Board. The question which has to be adjudicated upon (as has been raised by the appellants), was whether, the complaint in furtherance of which CCs Nos. 546-49 of 2006 had been filed by the Board or an officer authorised by the Board. To be valid, in terms of the mandate of Section 43(1) of the Air Act, it ought to be filed either by the Board or by an officer authorised by the Board.



6. Insofar as the abovementioned aspect of the matter is concerned, it is not a matter of dispute that vide Notification/Resolution dated 29-3-1989, the Karnataka State Pollution Control Board delegated certain powers to the Chairman of the Board. The aforesaid resolution (limited to the instant issue), is being reproduced below:

“Subject No. 63.11: Delegation/Empowering of technical, administrative and financial powers to Chairman, Member-Secretary and other officers working in the Board.

The subject of delegation of power to the Chairman was also discussed, while Subject No. 10 was being discussed. After detailed discussion, the Board decided to delegate its power and functions to the Chairman of the Board in terms of Section 11-A of the Water (Prevention and Control of Pollution) Act, 1978 (amended) and Section 15 of the Air (Prevention and Control of Pollution) Act, 1981 under the following circumstances:

(a) In respect of industries that are discharging their effluent without a valid consent under Sections 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 23 of the Air (Prevention and Control of Pollution) Act, 1981, the Chairman is authorised to initiate legal action under relevant sections.

(b) In respect of industries against whom orders passed by the Chairman under Section 32(1)(c) of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 23 of the Air (Prevention and Control of Pollution) Act, 1981 and if such units have not complied with the directions issued, the Chairman of the Board is authorised to initiate legal action for violating the direction issued under Section 32(1)(c) under the Water Act and Section 23 of the Air Act, under relevant penal provision of the respective Acts.

The legal action initiated in terms of above delegation of powers, the Board shall be kept informed at the next immediate meeting.”

The Board could delegate the above power to the Chairman of the Board, because Section 43(1) of the Air Act, allowed it to do so. In view of the conclusions recorded above, consequent upon the passing of the Resolution dated 29-3-1989, the complaint under Section 43(1) of the Air Act could have been filed either by the Board or by its Chairman.

7. According to the learned counsel for the respondents, proceedings came to be initiated by an order dated 4-4-2006 passed by the Chairman of the Karnataka State Pollution Control Board. Relevant extract of the above order is reproduced below:



“In view of the above, I do hereby authorise the Regional Officer, Karwar to initiate criminal action under Section 37 of the Air (Prevention and Control of Pollution) Act, 1981 by filing criminal case in the competent court against 17 occupiers of the iron ore stackyards located in and around the Karwar, Ankola and Jolda Taluks of Uttara Kannada District as per the list enclosed as Annexure 1.”

Having perused the aforesaid communication it emerges that the Chairman of the Board authorised the Regional Office, Karwar to initiate criminal action under Section 37 of the Air Act, by filing criminal cases in courts having jurisdiction to deal with them, against 17 owners of iron ore stackyards, located in and around the Karwar, Ankola and Jolda Taluks of Uttara Kannada District. **It is not possible to accept the contention of the respondents that initiation of the proceedings on the basis of the above order dated 4-4-2006 can be treated as compliance with the mandate contained in Section 43(1) of the Air Act, because the same has reference to a complaint made by the “Board or any officer authorised in this behalf by it”.**

8. In compliance with the order of the Chairman dated 4-4-2006, the Regional Officer (Deputy Environmental Officer) Shri Gopalakrishna B. Sanatangi, filed complaints before the Judicial Magistrate, First Class II, Karwar. It is natural therefore to conclude that the complaint against the appellants was neither filed by the Board or its Chairman but was filed by the Regional Officer (Deputy Environmental Officer).

9. Section 43 of the Air Act has already been extracted hereinabove. It is apparent therefrom that courts would take cognizance of complaints filed by the Board, or any officer authorised by the Board in that behalf. The Notification/Resolution dated 29-3-1989 indicates that the officer authorised was the Chairman of the Board. The Board could delegate the above power to the Chairman of the Board because Section 43(1) of the Air Act authorised the Board to do so. In that view of the matter, either the Board or the Chairman of the Board could have filed the complaints in terms of the mandate contained in Section 43(1) of the Air Act. The power to file the complaint could not be exercised by any other authority/officer. Under the principle of “delegatus non potest delegare”, the delegatee (the Chairman of the Board) could not have further delegated the authority vested in him, except by a clear mandate of law. Section 43 of the Air Act vested the authority to file complaints with the Board. Section 43 aforementioned also authorised the Board to delegate the



above authority to any “officer authorised in this behalf by it”. The “officer authorised in this behalf” was not authorised by the provisions of Section 43 of the Air Act, or by any other provision thereof, to further delegate the authority to file complaints. The Chairman of the Board, therefore, had no authority to delegate the power to file complaints to any other authority for taking cognizance of offences under the Air Act.

10. It is apparent that the determination to initiate action against the appellants, and other similarly placed persons, against whom action was proposed to be taken by the Chairman of the Board vide his order dated 4-4-2006 was not in consonance with law. Annexure P-11 appended to Criminal Appeal No. 152 of 2012 reveals that the complaint was filed and the proceedings were initiated before the Judicial Magistrate, First Class II, Karwar, by the Regional Officer (Deputy Environmental Officer) Shri Gopalakrishna B. Sanatangi, in his capacity as a complainant. The Regional Officer (Deputy Environmental Officer) Shri Gopalakrishna B. Sanatangi had no jurisdiction to prefer such complaints. Accordingly, we are of the view that the aforesaid complaints dated 28-4-2006 are liable to be set aside on the instant technical ground itself. Ordered accordingly.

11. Since the petitions filed by the appellants under Section 482 of the Criminal Procedure Code are being accepted merely on a technical ground, we hereby direct the competent authority, namely, the Board (or the Chairman of the Board) to reinstate the above proceedings, in consonance with the provisions of Section 43(1) of the Air Act. The process shall positively be reinstated within two months from today. In case of failure to initiate fresh proceedings within the time stipulated hereinabove, it shall be imperative for the competent authority to place the reasons for not doing so before this Court on the expiry of a period of two months. Extension of time, if needed, shall also be sought by the authorities from this Court by moving an appropriate interlocutory application.”

(emphasis supplied)

17. The aforesaid judgment of the Hon’ble Supreme Court will apply squarely to the facts of the present case. As pointed out hereinabove, in terms of notification No. S.O. 624(E) dated 03.09.1996 as referred to in notification



No. F-08(86)/EA/Env./2008/9473 dated 07.01.2009, the Central Government has authorised the Chairman and Member Secretary of the committee as notified under The Water (Prevention & Control of Pollution) Act, 1974 and The Air (Prevention & Control of Pollution) Act, 1981 i.e., Delhi Pollution Control Committee (DPCC/Respondent No. 2) to lodge a complaint under Section 19 of the Act. It is pertinent to note that no power has been given in the aforesaid notification for further delegation of power by the Chairman and Member Secretary of the said Committee to file complaint under Section 19 of the Act. The reliance placed by the respondent on the minutes of 55th DPCC Board Meeting dated 09.12.2009 is misplaced. As held by Hon'ble Supreme Court in **P. Pramila & Others (supra)** such authorisations to further delegate the power by the Chairman and the Member Secretary is not permissible unless the same has been provided for in the provisions of the statute or rules. It is further pertinent to note that the said minutes in the concerned agenda records that in one of the District Courts, the concerned Court had allowed the Member Secretary to be represented through authorized officer subject to the condition that the same may be approved by the DPCC and therefore, authorization to file a complaint was given to the concerned area AEE under Section 19 of the Act. The aforesaid observation in the said minutes reflects that in a given case where a complaint was filed by the Member Secretary, the concerned Court had probably permitted the Member Secretary to be represented through its authorized representative but at the same time no such permission could have been given to the Member Secretary to authorize anyone on his behalf to file a complaint under Section 19 of the Act.



18. In **Nazir Ahmad and The King-Emperor, 1936 SCC OnLine PC 41**, the Privy Council was dealing with a case where the appellant was convicted on the strength of a confession said to have been made by him to a Magistrate under the provisions of Section 164 of the Cr.P.C. Oral evidence of the said alleged confession was given by the learned Magistrate but the same was not recorded by him, as required under Section 164 of the Cr.P.C. While dealing with the aforesaid situation, the Privy Council observed and held as under:

“The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

19. Learned APP for the State placed reliance on the judgment in **Food Inspector, Health Department (supra)** wherein while dealing with the provisions of The Prevention of Food Adulteration Act, 1954, the Hon’ble Supreme Court has observed and held as under:-

“2. Reason for quashing the complaints were its filing by the Inspectors who it has been held, were not persons authorised in law. It was held in one case that the Chief Medical Officer having been authorised to file the complaint by a notification issued by the Chandigarh Administration he could not delegate his authority further in favour of the Inspector. In the other, the court found that launching of prosecution and giving consent for launching prosecution were separate and independent functions. Since the notification issued by the Administration under Section 20(1) of the Act authorised the Medical Officer, Chandigarh to institute prosecution, only he could not give consent. Consequently the complaint filed with his consent was by a person not authorised under law and it could not be taken cognisance of.

3. Section 20(1) of the Prevention of Adulteration Act reads as under:

“20. Cognizance and trial of offences.— (1) No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14-A shall be instituted except by, or with the written consent of the Central Government or the State Government or a



person authorised in this behalf by general or special order, by the Central Government or the State Government:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Section 12, if he produces in court a copy of the report of the public analyst along with the complaint.”

4. It came up for interpretation in *A.K. Roy v. State of Punjab* [(1986) 4 SCC 326 : 1986 SCC (Cri) 443 : AIR 1986 SC 2160] . It was held: (SCC p. 332, para 10)

“A careful analysis of the language of Section 20(1) of the Act clearly shows that it inhibits institution of prosecution for an offence under the Act except on fulfilment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government, or a person authorised in that behalf by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in Section 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. **The terms of Section 20(1) do not envisage further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised.**”

5. A complaint under Section 20 thus could be instituted apart from Central or State Government, by a person authorised in that behalf. Such a person who is authorised to institute complaint could, “give his written consent for the prosecution by the Food Inspector”, (*A.K. Roy* [(1986) 4 SCC 326 : 1986 SCC (Cri) 443 : AIR 1986 SC 2160]). Chief Medical Officer, Chandigarh undisputedly, and as is clear from Notification No. 5210-UTF-4-67/9461 issued on 29-4-1967 by the Chandigarh Administration in exercise of powers conferred by sub-section (1) of Section 20 of the Act, was a person authorised to institute a complaint. Therefore he could give his consent as well for launching of prosecution. In doing so he was neither delegating his power nor acting contrary to Section 20. **He was acting within the scope of authority as a person authorised to institute complaint under Section 20(1) of the Act. He**



has been placed on a par with other authorities designated in the sub-section for purposes of granting consent.”

(emphasis supplied)

20. As per the aforesaid observation of the Hon'ble Supreme Court, Section 20 of The Prevention of Food Adulteration Act, 1954, provided for filing of complaint by the following modes:

- A) i) by the Central Government; or
- ii) the State Government; or
- iii) by a person authorised in this behalf, by general or special order, by the Central Government or the State Government; or
- B) i) with the written consent of the Central Government; or
- ii) with the written consent the State Government; or
- iii) with the written consent of a person authorised in this behalf, by general or special order, by the Central Government or the State Government.

However, in the present case, Section 19 of the Act provides for filing of complaint by the following modes:

- i) by the Central Government; or
- ii) any authority authorised by the Central Government in this behalf; or
- iii) any officer authorised by that Government in this behalf.

21. The aforesaid observation of the Hon'ble Supreme Court in **Food Inspector, Health Department (*supra*)** will not be applicable to the facts of the present case as similar provision of authorisation by way of written consent as envisaged in Section 20 of The Prevention of Food Adulteration



Act, 1954 is not provided for under the present Act. The power to file a complaint under Section 19 of the Act has been given to the Central Government or any authority or officer authorised in this behalf by that Government.

22. In the facts and circumstances of the present case, the intention of the legislature is clear to the extent that only the Central Government or any authority or person authorised by the Central Government in this behalf could file a complaint under Section 19 of the Act and Central Government *vide* the aforesaid notification has authorised the Chairman and the Member Secretary of the State Pollution Control Committee to file complaint under Section 19 of the Act. It is a different thing to say that once a complaint has been filed by the competent authority, i.e., Chairman or the Member Secretary then the same can be pursued by an officer authorized with the permission of the concerned Court.

23. In the considered opinion of this Court the cognizance of offences under the present Act could only be taken in the manner provided under Section 19 of the Act.

24. In view of the aforesaid discussion the complaint filed by respondent no. 2 with respect to the petitioner was not filed by the competent authority under Section 19 of the Act and therefore the summoning order dated 06.11.2011 passed by learned Metropolitan Magistrate in CC No. 01/11 titled as *Delhi Pollution Control Committee Vs. M/s Aditya Birla Retail Ltd. & Ors.* and order dated 15.05.2012 passed by the learned ASJ, in Crl. Revision Petition 21/2011 titled *Thomas Varghese Vs. Delhi Pollution Control Board* are hereby set aside.



25. The present petition is allowed and disposed of accordingly.
26. Pending applications, if any, also stand disposed of.
27. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

MARCH 13, 2024/sn