IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

WP(C) NO. 6805 OF 2025

PETITIONER/S:

AHALIA INTERNATIONAL FOUNDATION,
AHALIA CAMPUS, KOZHIPPARA P.O., PALAKKAD DISTRICT,
REPRESENTED BY ITS TRUSTEE, PIN - 678557

BY ADVS.
NISHA GEORGE
GEORGE POONTHOTTAM (SR.)
SIDHARTH.R.WARIYAR

RESPONDENT/S:

1 **THE STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY, (SEIAA KERALA), 4TH FLOOR, KSRTC BUS TERMINAL COMPLEX, THAMPANOOR, THIRUVANANTHAPURAM, REPRESENTED BY ITS CHAIRMAN, PIN - 695001**

2 **THE KERALA STATE POLLUTION CONTROL BOARD, HEAD OFFICE, PATTOM P.O., THIRUVANANTHAPURAM, REPRESENTED BY ITS CHAIRPERSON, PIN - 695004**

3 **THE VADAKARAPATHY GRAMA PANCHAYAT, VADAKARAPATHY, PALAKKAD, REPRESENTED BY ITS SECRETARY, PIN - 678556**

BY ADVS.
FOR R1 BY ADV.M.P.SREEKRISHNAN, SC
FOR R2 BY SHRI.T.NAVEEN, SC
R3 BY SRI. K.MOHANAKANNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13.03.2025, THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, a non-profit organization primarily focussed on healthcare, has approached this Court being aggrieved by the stand taken by the 2nd respondent- The Kerala Pollution Control Board, insisting on environmental clearance for the constructions made by the petitioner for granting Consent to Operate. The reliefs sought by the petitioner are as follows:

> *"i. Issue a writ declaring that the petitioner is exempted from procuring prior Environmental Clearance as per the amended provisions of the Environmental Impact Assessment Notification, 2006 and the insistence of the Pollution Control Board to obtain E.C is not a legal requirement;*
> *ii. Issue a writ declaring that the 2nd respondent is bound to grant consent to operate to the petitioner without insisting for Environmental Clearance;*
> *iii. Issue a writ of mandamus directing the 2nd respondent to issue consent to operate to the petitioner;*
> *iv. Issue a writ of mandamus directing the 1st respondent to issue Environmental Clearance to the petitioner*
> *v. Issue a writ of mandamus directing the 3rd respondent to issue renewed Certificate of Registration for the Hospital of the petitioner Trust;*
> *vi. Dispense with the filing of English translation of vernacular documents;*
> *vii. Issue such other Writ, Order or direction as this Hon'ble Court may deem fit in the facts and circumstances of this case."*

2. The facts that led to the filing of this writ petition are as follows:

As the petitioner intended to establish a speciality hospital for women and children, they obtained a building permit from the 3rd

respondent Grama Panchayat, as evidenced by Ext.P1, for constructing a hospital building with a total area of 32437.35 sq.mts. Exhibit P1 is dated 5.7.2008 and the construction of the hospital began in 2009. The petitioner also obtained a 'Consent to Establish', from the 2nd respondent as early as 01.07.2009, which is Ext.P2. According to the petitioner, they have already provided necessary measures for environmental conservation and sustainability. The petitioner also obtained registration from the 3rd respondent under the Kerala Panchayat Raj (Registration of Private Hospitals and Private Paramedical Institutions) Rules 1997, as early as in the year, 2011. After completing the construction of the entire building, the petitioner applied for 'Consent to Operate' from the 2nd respondent on 29.12.2019. However, the 2nd respondent, instead of granting the same, required the petitioner to re-submit the application along with an Environmental Clearance from the 1st respondent for the functioning of the hospital. This writ petition is submitted by the petitioner in such circumstances challenging the same.

3. According to the petitioner, such a stipulation is not at all necessary in view of the subsequent notification issued in this regard. According to the petitioner, initially, the relevant notification was Environmental Impact Assessment Notification, 2006 (SO 1533 (E)

dated 14.9.2006, which contemplated prior environmental clearance in the case of construction projects having an area beyond 20,000 sq.mts. However, later, the requirement of prior environmental clearance in respect of the construction projects was substituted by a further notification dated 15.11.2018, wherein the minimum area for which prior environmental clearance required, was enhanced to 50,000 sq.mts. from 20,000 sq.mts. Exhibit P4(b) is the said notification. Therefore, it was pointed out that, in the light of the above, it is not necessary for the petitioner to obtain a prior environmental clearance. Besides, it was also the case of the petitioner that the petitioner is entitled to get an exemption in respect of the building used for the purpose of education, as the petitioner is running paramedical educational courses along with the hospital.

4. A statement was filed by the respondent No.1, wherein, the contentions raised by the petitioner are opposed. It is pointed out that the notification issued in the year 2018 cannot be made applicable to the case of the petitioner, as the petitioner admittedly commenced the work on the basis of an Ext.P1 permit in the year 2009. At the relevant time, what was in existence was 2006 notification, which contemplated for prior environmental clearance for all constructions beyond 20,000 sq.mts. Since the requirement was

"prior environmental clearance", the subsequent notifications which are having prospective operation only, cannot be made applicable to the case of the petitioner.

5. The petitioner had already violated the requirement of prior environmental clearance as on the date of commencement of the project and the same cannot be effaced by relying upon subsequent notification. It was pointed out that, as far as 2018 notification is concerned, the operation of the same is stayed by the High Court of Delhi as per Annexure R1(a) order and also by the Principal Bench of the National Green Tribunal as evidenced by R1(b). In such circumstances, on that reasons also, those notifications cannot be relied on. It was also pointed out that, now a new notification was issued by the Ministry of Environment Forest and Climate Change of India on 29.1.2025, a copy of which is produced as Annexure R1(c) wherein criteria remained the same viz., 20,000 sq.mts. It was also pointed out that, even though it contemplates for certain exemption in respect of industrial sheds, schools, college and hostel, educational institution etc., the same cannot be availed by the petitioner, as admittedly the petitioner had obtained a permit for a hospital and the hospital is not one among the exempted categories as per the present notification.

6. I have heard Sri. George Poonthottam, the learned Senior Counsel appearing for the petitioner assisted by Smt. Nisha George, Sri.M.P. Sreekrishnan, the learned Standing Counsel for the 1st respondent, Sri.T.Naveen, the learned Standing Counsel for the 2nd respondent and Sri. K. Mohanakannan, the learned Standing Counsel for the 3rd respondent.

7. The learned Senior Counsel for the petitioner vehemently contended that under no circumstances, the 2nd respondent can insist for an environmental clearance, as 2018 notification (Ext. P4(b)) specifically contemplates the requirement of environmental clearance from the 1st respondent only in respect of the buildings having an area more than 50,000 sq.mts., whereas the petitioner's building has an area of 32437.35 sq.mts only. However, the crucial aspect to be noticed is that as rightly pointed out by the learned Standing Counsel for the 1st respondent, admittedly, the petitioner started the construction of the hospital in the year, 2009 on the basis of Ext.P1 building permit dated 25.5.2008. In Ext.P1 building permit it is specifically mentioned that the total plinth area comes to 32437.35 sq.mts. It is also an admitted fact that, the petitioner commenced the said construction based on the same. Therefore, as on the said date, what was prevailing was the 2006 notification, which provided for prior environmental clearance in

respect of the buildings having an area more than 20,000 sq.mts. Therefore, under no circumstances the petitioner should have commenced any construction without obtaining prior environmental clearance as envisaged in the year 2006 notification. The reliance placed on the subsequent notifications cannot be accepted as well, since those are having prospective operation only. *In* ***P. Mahendran and Others v. State of Karnataka and Others [(1990) 1 SCC 411],*** *in para. 5 the Hon'ble Apex Court has held that, "It is a well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure".*

8. Even if it is assumed for argument sake that, the subsequent notifications are applicable, the petitioner cannot avail the benefits of the same due to various reasons. Even though a subsequent notification was issued in the year, 2014 granting certain

exemptions to buildings used for accommodating industrial sheds, school, college, hostel, educational institutions etc, the petitioner cannot claim the benefit of the same, as going by the building permit, the construction was intended for establishing the hospital and a construction for the hospital is not exempted. Moreover, 2014 notification was interfered with by the Division Bench of this Court in WP(C) No.3097/2016 by quashing the same as it was found that, the said notification was in deviation from the draft notification published. The subsequent notification was published in the year, 2018 and the same is already stayed by the High Court of Delhi as evidenced by Annexure R1(a) order and also by the Principal bench of the National Green Tribunal as evidenced by Annexure R1(b).

9. One of the contentions of the learned Senior Counsel was that the order of stay passed by the Delhi High Court cannot be made applicable in the State of Kerala, as according to him, the impact of the stay order is confined to the territories of the Delhi High Court. However, I am not inclined to accept the same. The legal position in this regard is settled by various judicial pronouncements rendered by the Hon'ble Supreme Court including the one in **Kusum Ingots & Alloys Ltd. v. Union of India and Another [(2004)6 SCC 254]**. In the said decision, in paragraph 22 it was categorically observed by the

Hon'ble Supreme Court that *an order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act*. Therefore, the order of stay passed by the High Court of Delhi will have its application, even in the territory of the State of Kerala. Even if it is assumed that the said stay order will not have any effect, there is an order of stay passed by the National Green Tribunal as evidenced by Annexure R1(b) as well. The same is applicable throughout the country. Therefore, the petitioner cannot rely on the 2018 notification.

10. As far as the notification published in the year 2025 is concerned, the criteria therein remains the same ie. all constructions having more than 20,000 sq.mts have to obtain prior environmental clearance. Of course, it is true that, the said notification contemplates for exemption for industrial sheds, college, hostel for educational institution etc. for calculating plinth area for the purpose of applying the above criteria. As mentioned above, it is evident from Ext.P1 that the petitioner intended to establish a hospital, and there is no mention of any educational institution. In the 'Consent to Establish', which the

petitioner obtained as evidenced by Ext.P2 in the year 2009 also, the activities shown were that of the hospital. Therefore, there is no material to show that the construction was commenced for accommodating any educational institution.

11. Thus, after carefully going through all the statutory provisions and materials placed on record, I find that the petitioner is not entitled to the relief sought for. Evidently, the petitioner had obtained the building permit and started the construction intended for a hospital, which was not excluded from the purview of the 2006 notification. As per the stipulations in the same, the requirement was to obtain prior environmental clearance for all constructions beyond the area of 20,000 sq.mts. Exhibit P1 building permit would indicate that the extent of the building proposed by the petitioner was 32437.35 sq.mts and therefore it comes within the category of the construction which requires prior environmental clearance. As far as the notifications relied on by the petitioner are concerned, I have already held that the same cannot have any retrospective application, particularly because, what was required in 2006 was an environmental clearance prior to the commencement of the construction.

Therefore, I do not find any merits in the contentions raised by the petitioner and accordingly this writ petition is dismissed

without prejudice to the right of the petitioners to take necessary steps for obtaining the environmental clearance.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

pkk*

APPENDIX OF WP(C) 6805/2025

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF BUILDING PERMIT NO. 60/08 DATED 05.07.2008 OF THE VADAKARAPATHY GRAMA PANCHAYAT**
EXHIBIT P2	**TRUE COPY OF CONSENT TO ESTABLISH NO. PCB/HO/PKLD/NOC/37/2008 DATED 01.07.2009 ISSUED BY THE STATE POLLUTION CONTROL BOARD, AND VALID TILL 30.06.2012**
EXHIBIT P3	**TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF PRIVATE HOSPITALS AND PRIVATE PARA MEDICAL INSTITUTIONS DATED 05.09.2011 REGISTERING THE HOSPITAL AS NO. 4/2011**
EXHIBIT P3(A)	**TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 11.06.2021 UNDER THE KERALA PANCHAYAT RAJ (REGISTRATION OF PRIVATE HOSPITALS AND PRIVATE PARA MEDICAL INSTITUTIONS) RULES, 1997 FOR THE YEAR 2021-22.**
EXHIBIT P3(B)	**THE REGISTRATION CERTIFICATE DATED 21.04.2022 UNDER THE KERALA PANCHAYAT RAJ (REGISTRATION OF PRIVATE HOSPITALS AND PRIVATE PARA MEDICAL INSTITUTIONS) RULES, 1997 FOR THE YEAR 2022-23.**
EXHIBIT P4	**TRUE COPY OF OWNERSHIP CERTIFICATE NO. A2/1442/2011 DATED 12.12.2011 ISSUED BY THE VADAKARAPATHY GRAMA PANCHAYAT**
EXHIBIT P4(A)	**TRUE COPY OF OWNERSHIP CERTIFICATE NO. 5086501/762/2023 DATED 29.04.2023 ISSUED BY THE VADAKARAPATHY GRAMA PANCHAYAT**
EXHIBIT P5	**TRUE COPY OF OFFICE MEMORANDUM F. NO. 22-21/2020-IA.III DATED 07.07.2021.**
EXHIBIT P6	**TRUE COPY OF LETTER NO. SIA/KL/MIS/72912/2022 DATED 24.06.2022 ISSUED BY THE ADMINISTRATOR OF THE 1ST RESPONDENT TO SRI. M. R. DINIL, ONE OF THE**

	TRUSTEES OF THE PETITIONER
EXHIBIT P7	**TRUE COPY OF ORDER DATED 02.01.2024 IN WP(C) NO. 1394/2023 OF THE HON'BLE SUPREME COURT**
EXHIBIT P8	**TRUE COPY OF LETTER DATED 20.05.2024 ISSUED BY THE CHAIRMAN, KSPCB TO THE PETITIONER, ALONG WITH THE MINUTES OF THE HEARING CONDUCTED ON 23.04.2024**
EXHIBIT P9	**TRUE COPY OF THE LETTER DATED 05.06.2024 ISSUED BY THE MANAGING TRUSTEE OF THE PETITIONER TO THE CHAIRPERSON OF THE 2ND RESPONDENT**
EXHIBIT P10	**TRUE COPY OF LETTER NO. KSPCB/780/2024/EE-1 DATED 25.08.2024 ISSUED BY THE 2ND RESPONDENT.**
EXHIBIT P4(B)	**TRUE COPY OF S.O. 5736(E) DATED 15.11.2018 ISSUED BY THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE**
EXHIBIT P4(C)	**TRUE COPY OF S.O. 5733(E) DATED 14.11.2018 ISSUED BY THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE**
RESPONDENT ANNEXURES	
ANNEXURE R1B	**A TRUE COPY OF THE ORDER DATED 3.12.2018 IN OA 1017/2018 ON THE FILES OF NGT**
ANNEXURE R1C	**A TRUE COPY OF SO 523 (E) DATED 29.01.2025 ISSUED BY MOEF AND CC**
ANNEXURE R1D	**A TRUE COPY OF THE ORDER DATED 06.01.2025 IN WP(C) SPECIAL LEAVE PETITION (CIVIL) DIARY NO(S). 49103/2024**
ANNEXURE R1A	**A TRUE COPY OF THE COMMON ORDER DATED 26.11.2018 IN WP(C) 12517 OF 2018 AND WP(C) 12570 OF 2018 ON THE FILES OF DELHI HIGH COURT**