

(1990) 06 GUJ CK 0003

In the Gujarat High Court

Case No : Spl. Criminal Application No. 1095 of 1989 converted from Spl. Civil Application No. 6022 of 1989

Gujarat Pollution Control Board

APPELLANT

Vs

Indian Chemicals Manufacturer and Others

RESPONDENT

Date of Decision : 11-06-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 29

Water (Prevention and Control of Pollution) Act, 1974 — Section 11A, 16, 17, 2, 23

Citation : (1992) CriLJ 1024 : (1990) 2 GLR 590

Hon'ble Judges : T.U. Mehta, J

Bench : Single Bench

Advocate : K.N. Baxi, for the Appellant; M.A. Bukhari, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.U. Mehta, J.—The petitioner has approached this Court for quashing and setting aside the judgment and order passed by the learned Judicial Magistrate, First Class, 4th Court, Baroda below Ex. 10 as well as Ex. 1 in Criminal Case No. 377 of 1988.

2. The facts of the case are that on behalf of the petitioner-Board, the Environmental Engineer filed a complaint for offences under Sections 25 26 punishable u/s 44 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "the said Act") against the respondents in the Court of the learned Judicial Magistrate, F.C., 4th Court, Baroda.

3. The case of the prosecution was that accused No. 1 is a partnership concern in the name and style of Indian Chemicals Manufacturer, while accused Nos. 2 and 3 are partners therein. According to the complaint, the accused are running their chemical factory at G.I.D.C. Estate in Nandesari, that the said factory does not treat its waste-water or trade effluent as per the prescribed tolerance limits prescribed by the Board and that such untreated trade-effluent is being let out in

Mini-river through new and altered outlets of the factory.

4. On behalf of the accused, application, Ex. 10 was filed raising the plea that the complaint is liable to be dismissed because the complaint is filed without previous sanction of the State Board and, therefore, the Court cannot take cognizance except on a complaint made by the State Board or with the previous sanction of the State Board.

5. The parties were heard by the learned Magistrate and the application filed on behalf of the accused was allowed by an order dated 7-8-1989, holding that the Court cannot take cognizance of the complaint and assume jurisdiction to entertain the complaint in absence of previous sanction of the State Board to prosecute for offences under the provisions of the said Act.

6. Mr. Baxi, appearing on behalf of the petitioner, submitted that the learned Magistrate wrongly allowed the application, Ex. 10, without any statutory basis. He also submitted that the learned Magistrate exceeded his jurisdiction in declaring the Resolution of the petitioner-Board as illegal, without authority and invalid since the learned Magistrate has no authority for such declaration. Mr. Baxi submitted that the learned Magistrate has not properly appreciated the provisions of Section 11-A and Section 49 of the Act in proper perspective. He also submitted that the learned Magistrate wrongly came to the conclusion that the State Board cannot delegate its power u/s 11A of the said Act to sanction prosecution in favour of its Chairman. Mr. Bukhari, learned Addl. Public Prosecutor appearing on behalf of the State also adopts the submissions made by Mr. Baxi, learned Advocate appearing on behalf of the petitioner.

7. In the present case, it is not disputed that the sanction, marked 13/1 authorizing the complainant to file the complaint was given by the Chairman of the State Board. It is also admitted that the State Board itself has not given sanction to file this complaint, but the Chairman has accorded this sanction. The main question here is whether the State Board can delegate its power of sanctioning prosecution under the said Act.

8. Section 2(a) of the said Act defines "Board" as under :--

"Board" means the Central Board or a State Board.

Section 2(h) of the said Act provides as under : --

"State Board "means a State Board for the Prevention and Control of Water Pollution constituted u/s 4.

Section 4 provides for Constitution of State Boards. Section 5 provides for terms and conditions of service of members of the Board. Section 11A provides for delegation of powers to Chairman. Section 17 of the said Act provides for functions of State Board. Section 23 gives power to person empowered by the State Board to have a right of entry any inspection of any place for the purpose of performing any of the functions of the Board entrusted to him. Section 24

prohibits use of stream or well for disposal of polluting matter, .etc. Section 25 puts restrictions on new outlet or altered outlet for the discharge of sewage or trade effluent into a stream or well or sewer, or on lands without the previous consent of the State Board.

9. Section 49 which is relevant for our purpose reads as under:--

49. (1) No court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of the State Board, 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) Notwithstanding anything contained in Section 29 of the Code of Criminal Procedure, 1973 (2 of 1974) it shall be lawful for any Judicial Magistrate of the First Class or of any; Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act.

Therefore, Section 49 prohibits taking of cognizance of any offence by the Court under this Act except on a complaint made by, or with the previous sanction in writing of the State Board. It also, inter alia, provides that 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.

10. Now, in the present case, it is undisputed that no previous sanction is taken from the State Board for prosecuting the accused under the Act. It is also undisputed that the Resolution is passed by the Gujarat Pollution Control Board in the meeting held on 27-3-1984. The said Resolution reads as under:--

Resolved that the power of sanctioning prosecution in respect of offences committed under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and the rules made thereunder be and is hereby delegated to the Chairman of the Board.

11. Now, the question for consideration is whether it was competent for the State Board to delegate its power u/s 11A of the said Act to sanction prosecution in favour of its Chairman. The Trial Court has decided this question on the footing that to prosecute for the offences under the said Act or to give sanction for filing complaint in the Court is a special function or power of the State Board and this power cannot be delegated by the Board to any person u/s 11A of the Act and the Court came to the conclusion that Section 11A empowers the State Board to delegate the general functions as specified in Section 16 or Section 17 of the Act or other administrative functions or powers to the Chairman, but Section 11A does not give power to the Board to delegate the functions of sanctioning the prosecution provided u/s 49 of the said Act. The Trial Court also stated that u/s 49 the power of sanction to prosecute is given only to the State Board, otherwise the Legislature would have specified in Section 42 such power to any other person in addition to the State Board, or the Legislature would have added the

words "State Board", "Chairman", "any authorised officer of the State Board" or "any authorised officer of the Government", but that is not done and, therefore, the power to sanction the prosecution is only given to the State Board by the Legislature. The learned Magistrate came to the conclusion that the Legislature never intended to authorise the State Board to delegate its power u/s 49(1) to prosecute or to give previous sanction to prosecute for offences under the said Act to the Chairman of the State Board and, therefore, the Resolution of the State Board, marked 13/2 is illegal, without authority and invalid and the Court cannot take cognizance of the said complaint.

12. In my opinion, the trial Court has not correctly interpreted the scheme and the provisions of the said Act.

13. Sub-section 2(a) of Section 4 of the said Act reads as under:--

(2) A State Board shall consist of the following members, namely :--

(a) a chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by that State Government.

Provided that the chairman may be either whole time or part time as the State Government may think fit.

Section 8 of the said Act provides regarding meetings of Board, which reads as under:

A Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed :

Provided that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

14. Now, Section 11A which is inserted by Act 44 of 1978, reads as under :---

11-A. Delegation of powers to Chairman.-- The Chairman of a Board shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board.

15. Therefore, from Section 4(2)(a), it is clear that a Chairman should be a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters relating to environmental protection and to be nominated by the State Government, either for the whole time or part time; whereas S. 8 shows that the Board's meeting will be convened at least at the interval of every three months and if any business of an urgent nature is to be transacted, in the opinion of the Chairman,

the Chairman can convene a meeting of the Board at such time as he thinks fit. The situation may arise that hundreds of cases may be required to be filed at different times in the State for the violation of the provisions of the Act. It may not be possible to convene meetings of the State Board for all such cases separately nor it will be feasible to call for such meetings on account of different engagements of the different members of the Board and that may cause delay in prosecuting the defaulters or to carry out the urgent functions of the Board. It appears, therefore, that Section 11A is enacted to obviate the delay in carrying out the objects of the Act. If we look to Section 11A of the said Act, it appears that no exception is made for exercising the powers and performing the duties of the Board that may be delegated to the Chairman by the Board. If the Legislature wanted to carve out the exception regarding the power to be exercised u/s 49, Section 11A would have been worded in such a way as to eliminate the delegation of power u/s 49. But looking to the language of Section 11A, it appears that no exception is made regarding the delegation of power and performance of duties by the Chairman to be delegated by the Board. Section 11A is widely worded. Therefore, the Chairman will be in a position to exercise any power and perform any duty prescribed under the Act on passing of the Resolution by the Board u/s 11A. Section 11A speaks of delegation of powers of the Board without any classification or reservation and there cannot be any distinction as a special power and general power. There is no such concept provided in the Act. Section 11A speaks of delegation of powers and duties without any categorization. The distinction of special power u/s 49 does not satisfy the test of reasoning as it is only a power of sanctioning the prosecution which, in turn is for the effective implementation of provisions of the Act for the purpose of control of pollution. Therefore, the distinction made by the learned Magistrate regarding the special and general power cannot be accepted.

16. In the present case, as aforesaid, the Board in its 43rd meeting held on 27-3-1984 has passed a Resolution that the power of sanctioning prosecution u/s 49 of the said Act is delegated to the Chairman of the Board.

17. From the above discussion, it can be safely inferred that the Legislature intended to authorize the State Board to delegate its powers and duties to be performed under the Act to its Chairman. Therefore, power u/s 49(1) to prosecute or to give previous sanction to prosecute any person for offences under the Act can be delegated by the State Board to the Chairman u/s 11A of the Act. In the present case, the order of sanction to prosecute is given by the Chairman and it cannot be said that it is illegal or without authority and the Court can take cognizance of the complaint. In the present case, the cognizance was already taken by the Court.

18. In the result, this petition is allowed, the order dated 7-8-1989 passed by the learned Judicial Magistrate, F.C., 4th Court, Vadodara on Ex. 10 is quashed and set aside and the trial Court is directed to proceed with complaint on merits and in accordance with law. Rule is made absolute accordingly.