
(2004) 11 OHC CK 0032
In the Orissa High Court
Case No : Criminal M.C. No. 4978 of 1998

Kalinga Carbonates Ltd. and Another	APPELLANT
Vs	
Orissa State Prevention and Control of Pollution Board	RESPONDENT

Date of Decision : 18-11-2004

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 37(1), 49, 49(1)
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2005) CriLJ 1512 : (2004) 29 OCR 879 : (2005) 2 RCR(Criminal) 690

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : Patitapaban Panda and S. Patnaik, for the Appellant; Shanti Prakash Mohanty and P.K. Lenka, for the Respondent

Judgement

A.K. Parichha, J.—The petitioner is the Managing Director of M/s. Kalinga Carbonates Ltd., situated at Chandaka Nucleus Industrial Complex, Sector-B, Patia, Bhubaneswar in the District of Khurda. He was prosecuted u/s 37(1) of Air (Prevention and Control of Pollution) Act 1981, hereinafter referred to as "the Act", in short, for operating the industrial unit, without obtaining prior consent and clearance of the Orissa State Prevention & Control of Pollution Board, in short, "Board".

2. During the course of trial, the petitioner filed a petition on 17-7-1997 praying the Court to direct the complainant (present opposite party) to cause production of the documents of the XXVII meeting of the Board held on 31-10-1990 for proper and effective adjudication of the case. Opposite party filed objection indicating that such document cannot be made available as disclosure of some of the reports and resolutions will be against public interest and that the documents called for by the petitioner is not at all relevant for the case. Learned S.D.J.M. Bhubaneswar after hearing the parties, by order dated 21-9-1998 rejected the prayer of the petitioner. Aggrieved, the petitioner has filed the present CRLMC u/s 482, Cr. P.C. challenging the legality and propriety of the aforesaid order of the

learned S.D.J.M., Bhubaneswar.

3. Mr. P. Panda, learned counsel for the petitioner submits that the prosecution has suppressed the truth by not disclosing as to against whom sanction order has been passed by the Board meeting held on 31-10-1990 and as to who was authorised by the Board to file the prosecution, so the documents of the 27th meeting of the Board held on 31-10-1990 should be called for proper and effective adjudication of the case. According to him, without proper sanction and authorisation of the Board, the complaint lodged by the Assistant Law Officer of the Board is not maintainable. He submits that the learned S.D.J.M., Bhubaneswar failed to appreciate these points and passed a wrong order.

4. Mr. S. P. Mohanty, learned counsel appearing for the Board, on the other hand, submits that when the Board itself has filed a complaint, no sanction or authorisation is necessary and so, the documents relating to the meeting of the Board dated 31-10-1990 are not at all relevant.

5. From the rival submissions of the respective parties, the point which emerges for consideration is whether sanction and authorisation of the Board were necessary for launching the prosecution against the petitioners and whether the documents of 27th meeting of the Board are required for proper and effective adjudication of the case.

6. Section 49, Sub-section (1) of the Act reads thus :

"49. 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 pie-scribed, 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."

From the aforesaid provision of the Act, it is clear that the Board itself or any officer authorised on its behalf can launch the prosecution. According to the learned counsel for the petitioners, the Assistant Law Officer of the Board has filed the complaint in the present case and therefore, the authorisation of the Board in his favour is necessary and if such authorisation is not produced, then prosecution will be illegal and not maintainable. As against this, Mr. Mohanty, learned counsel appearing for opposite party submits that in the present case, the Board itself has filed the complaint and so no specific authorisation or resolution of the Board was necessary. According to him, the Board being a legal person, some one has to file the complaint on its behalf and one of the officers of the Board can be nominated for the task of filing the complaint. He further submits that in the present case the Assistant Law officer was nominated to file

the complaint and when the letter of nomination given by the Secretary is there before the Court, there is no necessity of calling for the documents relating to the resolution of the meeting of the Board. In that case, he relies on the case of M/s. Lipton India Ltd., G.T. Road, Ghaziabad Vs. State of Uttar Pradesh, In the said case, the Board resolved to file a complaint and entrusted the act of filing the complaint to the Assistant Environmental Engineer and accordingly, the Assistant Environmental Engineer filed the complaint. The filing of the complaint by the said Assistant Environmental Engineer was challenged on the ground that specific authorisation of the Board was not there. Their Lordships after hearing the contentions of the parties, observed thus :

"Where the Board resolved to file the complaint, naturally the act of filing complaint was to be performed by some officer of the Board well conversant with the facts of the case as the board is a legal person and not named person and thus, for performing aforesaid act of filing complaint, Board authorised one of its officers, to be nominated by Assistant Secretary. Who in turn nominated Assistant Environmental Engineer to file the complaint, it is sufficient compliance of Section 49 and the complaint thus filed by the Board through Assistant Engineer would be valid. In such a case, mere nomination by Assistant Secretary, does not amount to further delegation of a delegated power of further sub-delegation of sub-delegated power. When a statute conferring powers imposes certain duties and functions incidental to the exercise of the power in such a way that they are integrally connected with them, a permissible delegation of the power is effective to delegate duties and functions along with the power.

7. So, the legal position is clear that when the Board itself is the complainant, any officer of the Board may be nominated by the Secretary or Assistant Secretary of the Board and such nomination by the Secretary or Assistant Secretary would not amount to sub-delegation of power. It is also clear that when the Board itself is the complainant, no specific authorisation or resolution of the Board authorising a particular person to file the complaint is necessary.

8. In the present case, the cause title shows that the complaint has been filed by the Board itself through the Assistant Law Officer and the document has been produced to show that the Secretary of the Board nominated the Assistant Law Officer to file complaint on behalf of the Board and the Assistant Law Officer accordingly filed the complaint. In that situation, the documents relating to the XXVIIth meeting of the Board is not necessary to find out if specific authorisation in favour of the Assistant Law Officer, who has presented the complaint on behalf of the Board was there. Learned S.D.J.M. Bhubaneswar thus did not commit any legal error by rejecting the prayer for the petitioner to call for the documents of the XXVII meeting of the Board.

9. The CRLMC is accordingly found to be without any merit and is dismissed.