

(2007) 04 KAR CK 0033

In the Karnataka High Court

Case No : Criminal Petition No. 4760 of 2006

Nitin Majumdar

APPELLANT

Vs

State of Karnataka and Regional Officer Karnataka State
Pollution Control Board

RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 2 (k), 21, 22, 43 (1) (a)

Citation : (2007) ILR (Kar) 2969 : (2007) 4 KarLJ 569 : (2007) 4 KCCR 265 SN

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : V.P. Kulkarni, for the Appellant; S.G. Bhagawan, Amicus Curie, A.V. Ramakrishna, HCGP., for R1 and D. Nagaraj, for R2, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—These petitions are filed by the accused in Crl.Case Nos. 532/2006, 531/2006, 523/2006, 527/2006, pending on the file of JMFC Court, Dandeli, seeking quashing of the said proceedings.

2. The Karnataka State Pollution Control Board (in short State Board), through its Regional Officer, Karwar, has lodged the complaints against the petitioners herein alleging violation of Sections 21 and 22 of Air (Prevention and Control of Pollution) Act, 1981 (for short hereinafter referred to as the "Air Act"), which is punishable u/s 37 of the "Air Act". It is alleged in the complaint that the petitioners have illegally established and are operating the Iron Ore Stack Yard, at various places in Uttara Kannada District, without the previous consent of the Karnataka State Pollution Control Board (for short hereinafter referred to as the "State Board"); that the accused have not provided any pollution control measure in spite of repeated requests and instructions by the officials of State Board ; That the meetings were held between the representatives of the accused and the officials of the State Board and in the said meetings, the accused have agreed for providing pollution control measures to the Iron Ore Stack Yards and

prayed for time for the said purpose; In spite of the same, the accused-petitioners did not provide any pollution control measure to the Iron Ore Stack Yards. The permission is not obtained for establishing Iron Ore Stack Yard even thereafter. As the petitioners continued their illegal operations without complying with the norms, as stipulated u/s 21 and 22 of "Air Act", the complaint came to be lodged. Prior to lodging of complaints, the joint inspection of the officials of State Board with the representatives of the petitioners was made and during the said inspection it was observed as under:

- a) The bunds of sufficient height/retaining wall/Barricade of sufficient height around the storage yard is not provided.
- b) Continuous water sprinkling system (roads, storage yard) not adopted to suppress the fugitive emission of fine dust particles and most care to be taken during the unloading of vehicles.
- c) The loaded Lorries not covered with good quality tarpaulins during transportation.
- d) The unloaded Lorries are not cleaned thoroughly.
- e) The Iron ore filled bags/cement hollow blocks/sand bags are not kept around the covered Iron ore stacks.
- f) The storm water drain and Garland canal not made around the stack yard,
- g) The settling tank of sufficient size not provided to treat the surface runoff from the stack yard.
- h) Even after repeated notices issued from this office, the said company had failed to apply and obtain the consent for operation of the complainant Board. This is a continuous actionable nuisance and offence u/s 21/22 and 37 of Air (Prevention and Control of Pollution) Act, 1981. Besides this, the accused person has violated many other provisions of Environmental Laws related to pollution control, for which the complainant reserves his right to prosecute the accused.

3. As the activities of the accused are detrimental to the society at large and as the Iron Ore particles used to spread and mingle with air, which is detrimental to the nature and health of public at large, the complaints came to be lodged before the JMFC Court, Dandeli, as aforementioned by the State Board represented by its Regional Officer against the petitioners herein, The learned Magistrate after perusing the complaint and the documents produced along with the complaint, issued process against the petitioners. The petitioners have in these petitions have sought for quashing the proceedings pending before the JMFC Court.

4. Sri V.P. Kulkarni, learned advocate appearing for the petitioners in all these matters contended firstly that Iron Ore Stack Yard is not an industrial plant as defined u/s 2(k) of the "Air Act" and hence the violation of provisions of Section. 21 of the "Air Act" is not committed; secondly that the violation of Section. 22 of the "Air Act" is also not committed by the petitioners inasmuch as the standards

for emission of air pollutants into atmosphere as contemplated u/s 17(1)(g) of "Air Act" are not fixed by the State Board and consequently the question of violation of the same does not arise; and thirdly that the complaint is not filed either by the Board or by the Officer authorised by the Board and therefore the Court below is not justified in taking cognizance for the offence, in view of the provisions of Section 43(1)(a) of the "Air Act".

Sri D. Nagaraj, learned advocate appearing on behalf of the State Board opposed the submissions made by the petitioners' counsel, by inter alia contending that the act of operating Iron Ore Stack Yard, without taking necessary permission of the State Board and without taking steps to control the air pollution, amounts to violation of Sections 21 and 22 of the "Air Act"; that the Chairman is authorised by the Board to initiate legal action and in turn the Chairman has authorised the Regional officer to lodge the complaint; that in the meeting of the petitioners with the Regional Officers and Deputy Commissioner of District, certain standards were fixed for emission of air pollutants and as the said standards are violated, the petitioners are liable to be proceeded with.

5. It is relevant to note here itself that Sri S.G. Bhagawan, learned advocate was requested by the Court to assist as Amicus Curiae. Learned Amicus Curiae submitted that when the Act wants the complaint to be filed in a particular manner and if the complaint is not lodged in that manner, the proceedings vitiate. Hence, he submitted that the orders of taking cognizance by the Court below in these matters is bad in the eye of law.

6. In order to appreciate the contentions in a better manner, it is relevant to note the object of the legislature for enacting the "Air Act".

As the legislature considered it necessary to implement the decisions taken at United Nations Conference on the Human Environment held in Stockholm, in June 1972 for which India is the signatory and for taking appropriate steps for preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution, the "Air Act" was enacted. The Act provides for prevention, control and abatement of air pollution. As the air pollution is steadily increasing day by day, the "Air Act" was enacted for controlling the same. It is needless to mention that the presence in air, beyond certain limits of various pollutants discharged through industrial emissions and from certain human activities connected with traffic, heating, use of domestic fuel, refuse incinerations, etc, has a detrimental effect on the health of the people as also on animal life, vegetation and property.

7. Having felt that there should be an integrated approach to tackle the environmental problems relating to pollution, the "Air Act" came to be enacted with a view to achieve the object of controlling air pollution. Proper implementation and enforcement of anti-pollution laws, is therefore of prime importance to avoid ecological degradation and its adverse effects. As has been held by the Apex Court in the case of AIR 1991 420 (SC) , right to pollution free

water and air for full enjoyment of life is covered by Article 21 of the Constitution of India.

8. As aforementioned the first point raised by Sri V.P. Kulkarni is that Iron Ore Stack Yard will not come within the definition of "industrial plant" as defined u/s 2(k) of the "Air Act".

The word "industrial plant" is defined in Section 2(k) of the "Air Act" as under:

"industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere.

Section 2(m) of the "Air Act" defines "occupier" and the same reads thus:

"occupier", in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance.

9. Thus it is clear from the aforesaid definition that if a plant is used for any industrial or trade purposes and if it emits any air pollutant in atmosphere, the same is an industrial plant. And the person who has control over the affairs of the premises or in possession of the substance is an occupier. It is not in dispute that the petitioners have control over and are possessing the Iron Ore Stack Yards. Therefore they are the occupiers of the premises in question. It is also not in dispute that the iron ore is stocked for the purposes of trade by exporting the same.

The word "plant" is not defined under the Act. In the absence of any definition, the word "plant" will have to be assigned normal meaning as is understood in general parlance. The meaning of "plant" is exhaustively mentioned in Advanced Law Lexicon III Edition. The relevant portion of which reads thus:

"PLANT" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purpose of the business or profession, but does not include tea bushes or livestock.

"PLANT" includes machinery, equipment or appliance, whether affixed to land or not

"PLANT" (Production facility, Workshop) means a relatively self-contained area, structure or building containing one or more units with ancillary and associated infrastructure, such as;

- (i) Small administrative section;
- (ii) Storage/handling areas for feedstock and products;
- (iii) Effluent/waste handling/treatment area;
- (iv) Control/analytical laboratory;
- (v) First aid service/related medical section; and

(vi) Records associates with the movement into, around and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

"Plant" means the fixtures, machinery, tools, things, stocks, apparatus, appliances etc. necessary to carry on any trade or mechanical business, or any mechanical operation or process.

This Court is of the considered opinion that the word "plant" has got exhaustive meaning and such meaning cannot be delimited. It is too broad. The plant will include any article or object fixed or movable, live or dead, used by a businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. Any structure or thing which is used in the business either as a seat of business or the location where the business is carried on can be said to be "plant", in the sense that it is one of means of carrying on the business. Thus, Sri V.P. Kulkarni is not justified in his submission that the "plant" is a thing which is fixed to the land. In view of exhaustive meaning attached to the word "plant", this Court is unable to agree with the contention of the petitioners.

The Act in question is a beneficial legislation which is enacted for the purpose of proper maintenance of nature and health of public at large. Hence, even if it is possible to have two opinions on the construction of the provisions of the Act, the one which advances the object of the Act and is in favour of the people at large for whose benefit the Act is passed, has to be accepted. The judiciary in its sphere, shares the revolutionary purpose of the Constitutional order, and when called upon to decode social legislation must be animated by a goal-oriented approach. Where the law is meant for solving the human problems, the approach of the Court has to be from the point of view of furthering social interest and Courts should not function as if they are vacuo, but must act as parts of the society. In this context it is relevant to note the observations of Lord Denning which read thus:

A judge should not be a servant of the words used. He should not be a mere mechanic in the power-house of semantics." Reed Dickerson has in his "The Interpretation and Application of Statutes" warned against "the disintegration of statutory construction" and quoted Fuller to say:

...We do not proceed simply by placing the word in some general context.... Rather, we ask ourselves, What can this rule be for? What evil does it seek to avert?.... Surely the judicial process is something more than a cataloguing procedure...a rule or statute has a structural or systematic quality that reflects itself in some measure into the meaning of every principal term in it.

Looking to the intention of the legislature for enacting the "Air Act", it is clear that the word "plant" includes Iron Ore Stack Yard also, which emits dust particles in air. As the said plant is admittedly used for trade purpose, the place

in question comes within the definition of industrial plant.

10. Admittedly, the petitioners have not taken previous consent of the State Board to establish or to operate the Iron Ore Stack Yard in the air pollution control area. The State Government by issuing notification dated 30.5.1988 gazetted on 1.6.1988 has made it clear that the State Board has declared that the whole of State of Karnataka shall be "Air Pollution Control Area" for the purpose of the "Air Act". The Iron Ore Stack Yards are established and being operated in Uttara Kannada District of Karnataka State without any consent of the State Board. Hence, the petitioners have prima facie violated the provisions of Section 21 of the "Air Act" and the same is punishable u/s 37 of the "Air Act".

11. Secondly, it is further contended by Sri V.P. Kulkarni that the petitioners have not violated the provisions of Section 22 of the "Air Act" inasmuch as no standards are laid down by the State Board under Clause (g) of Sub-section (1) of Section 17 of the "Air Act".

Though the State Board has not independently fixed the standards under Clause (g) of Sub-section (1) of Section 17 of the Act, nevertheless the State Board is bound by the standards laid down by the Central Board. u/s 18(1)(b) of the "Air Act", every State Board shall be bound by the directions in writing as the Central Board may give to it. Looking to the scheme of Section 18 of the "Air Act", it is clear that opinion or decision of the Central Board binds the State Board. u/s 16 of the "Air Act", the functions of the Central Board are enumerated. u/s 16(2)(h) of the "Air Act", the Central Board shall lay down standards for the maintenance of quality of air. In pursuance of the said provisions a notification is issued by Central Pollution Control Board on 11.4.1994, which reads thus:

NATIONAL AMBIENT AIR QUALITY STANDARDS

1. Notification No. S.O.384(B), dt.11.4.1994-The Central Pollution Control Board in exercise of its powers conferred u/s 16(2)(h) of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) hereby notify the National Ambient Air Quality Standards with immediate effect.

SCHEDULE-I

Concentration in ambient air

Pollutant

Time weighted average

Industrial Area

Residential Rural & other Areas

Sensitive Area

Method of measurement.

1

2

3

4

5

6

Sulphur Dioxide (SO₂)

xxx

xxx

xxx

xxx

xxx

Oxides of Nitrogen as (NO₂)

xxx

xxx

xxx

xxx

xxx

Suspended particulate Matter (SPM)

Annual Average* 24 hours*

360?g/m³ 500?g/m³

140?g/m³ 200?g/m³

70?g/m³ 100?g/m³

(Average flow rate not less than 1.1 m³/minute

Suspended Particulate matter (size less than 10?) (RPM)

Annual Average* 24 hours*

120?g/m³ 150?g/m³

60?g/m³ 100?g/m³

50?g/m³ 75?g/m³

Lead (Pb)

XXX

XXX

XXX

XXX

XXX

Carbon Monoxide (CO)

XXX

XXX

XXX

XXX

XXX

* Annual Arithmetic mean of minimum 104 measurements in a year taken twice a week 24 hourly at uniform interval.

** 24 hourly/8 hourly values should be met 98% of the time in a year. However, 2% of the time, it may exceed but not on two consecutive days.

12. It is clear from the said notification that the Central Board notified the National ambient air quality standards. The said notification binds all the State Boards in India including the Karnataka State Pollution Control Board. It is further clear from the said notification that the Central Board fixed certain standards relating to emission of pollutants in area including the pollutant "Suspended Particulate Matter" (SPM). In this matter the pollutant which emanates from Iron Ore Stack Yard is Suspended Particulate Matter as is clear from the documents produced by the State Board along with the complaint. Thus, even if no separate notification is issued by the State Board laying down the standards for emission of air pollutants into atmosphere from the Iron Ore Stack Yards in question, the aforementioned notification dated 11.4.1994 issued by the Central Pollution Control Board is deemed to be the notification issued by the State Board for all practical purposes inasmuch as the State Board shall have to follow the guidelines laid down in the notification dated 11.4.1994 issued by the Central Control Board. This is further clear from the provisions of Section 18 of the "Air Act". In this view of the matter, it cannot be said that the petitioners have not violated the provisions of Section 22 of the "Air Act".

13. However, the matter is still at the initial stage of the proceedings inasmuch as only notices are issued to the petitioners to appear before the Court.

14. The aforesaid observations of this Court are all preliminary in nature only for the purpose of disposal of these petitions. It is open for the petitioners to argue on merits of the matter in detail before the Trial Court, In view of the same, the

second contention of the petitioners fails.

15. Lastly it is contended on behalf of the petitioners that the Court below has gravely erred in taking cognizance for the offence, though the complaint is not lodged by the State Board or any Officer authorised in this behalf by it as contemplated u/s 43(1)(a) of the "Air Act".

It is relevant to note the provisions of Section 43(1) of "Air Act" which read thus:

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.

17. In these cases the complaints are lodged by the Karnataka State Pollution Control Board represented by its Regional Officer (Deputy Environmental Officer). Thus it is prima facie clear that the complaints are lodged by the State Pollution Control Board itself. If the Board lodges the complaint, it need not take authorisation from anybody. u/s 15 of the "Air Act", the State Board may by general or special order, delegate to the Chairman or the member-secretary or any other officer of the Board subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary. In this regard the State Board has passed a resolution on 29.3.1989 in Subject No. 63.11, which reads thus:

Subject: Delegation/Empowering of Technical, No. 63.11 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 11A of the Water (Prevention and Control of Pollution) Act, 1978 (Amended) and Section 15 of Air (Prevention and Control of Pollution) Act, 1981 under the following circumstances:

a) In respect of Industries who are discharging their effluent without a valid Consent u/s 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 and Industries operating without valid Consent u/s 21 of the Air (Prevention and Control of Pollution) Act, 1981, the Chairman is authorized to initiate Legal Action under relevant Sections.

b) In respect of Industries against whom orders passed by the Chairman u/s

32(1)(c) of the Water (Prevention and Control of Pollution) Act, 1974 and u/s 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 authorized to initiate Legal Action for violating the direction issued u/s 32(1)(c) under 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 other items of delegation of Powers proposed under this Subject are deferred, to be placed at the next Board Meeting for a decision.

It is, thus clear from the aforesaid resolution passed by the State Board that the Chairman of the Board is authorised to initiate legal action under the relevant Sections.

18. It is relevant to note here itself that the Chairman of the State Board by his order dated 4.4.2006 has authorised Regional Officer, Karwar to initiate criminal action u/s 37 of the "Air Act" by filing criminal case in competent Court against 17 occupiers of the Iron Ore Stack Yards located in and around Karwar, Ankola and Jolda Taluks of Uttara Kannada District. The said list of 17 occupiers includes petitioners also. Thus it is clear from the said order of the Chairman of the State Board that he has authorised Regional Officer to lodge a complaint against the petitioners u/s 37 of the "Air Act".

19. It is in this context, it is submitted by Sri V.P. Kulkarni as well as the learned Amicus Curiae that the Chairman of the State Board has not lodged the complaint but the same is lodged by the Regional Officer of State Pollution Control Board and thus the complaint is not maintainable. According to them, as the Chairman, i.e., the delegatee has further delegated his powers to lodge the complaint to the regional officer, the act of lodging the complaint suffers from the principles of "delegates non potest delegare"

20. The aforesaid submissions cannot be accepted, in view of the fact that the complaint is lodged by the State Board itself. However, the Board is represented by the Regional Officer in these matters. By the aforementioned resolution the Board has authorised the Chairman to initiate legal action. Thus the Chairman could have signed the complaint and could have lodged the complaint. However, he has chosen to authorise the Regional Officer of the area to lodge the complaint. This action of the Chairman of the State Board does not amount to sub-delegation of his power. He has merely authorised the Regional Officer to initiate criminal action against the petitioners. Where, the Board wants to file complaint, naturally the act of filing complaint is to be performed by some Officer of the Board well conversant with the facts of the case as the Board being a Corporate personality is a legal person and not natural person. Thus, for initiating the legal action, the Board authorised one of its members, i.e., the Chairman, who in turn nominated the Regional Officer to file the complaint, Hence, the

same does not violate the provisions of Section 43 of the "Air Act". In this case, mere nomination of the Regional Officer by the Chairman of the Board does not amount to further delegation of delegated power. Section 43 of the "Air Act" does not require any sanction of the Board irrespective of the fact as to whether the complaint is lodged by the Board or any other person. The requirement of Section 43 is only an authorisation by the Board, if any Officer lodges the complaint. In these matters as aforementioned the complaint is lodged by the State Board itself represented by the Regional Officer of the area. Though in these matters, the State Board has not directly authorised the Regional Officer to lodge the complaint, the Chairman of the State Board who is delegated with powers to initiate legal action, has authorised the Regional Officer to sign the complaint on behalf of the Board. As aforementioned, the regional officer need not take sanction of the Board to lodge the complaint. What is required is only the authority to sign the complaint which the regional officer got from the delegated authority i.e., the Chairman of the Board. Under such circumstances, it cannot be said that the action of the State Board is hit by the principles of "delegates non potest delegare". The argument developed by Sri V.R. Kulkarni, the learned advocate for the petitioners is no doubt interesting one and as a proposition of law there cannot be two opinions about the same, that there cannot be sub delegation or further delegation of the delegated powers. But in the instant case, in my opinion since there is no sub-delegation or farther delegation as discussed above, the argument as developed is of no use in the facts and circumstances of the case. However, when a statute conferring powers imposes certain duties and functions incidental to the exercise of 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. Same is the view of the Division Bench of the Allahabad High Court in the case of M/s. Lipton India Ltd., G.T. Road, Ghaziabad Vs. State of Uttar Pradesh, .

21. The maxim "delegates non potest delegare" does not embody a rule of law. It merely lays down a rule of construction of a statute. However, looking to the facts and circumstances of each case, the construction that would best achieve the purpose and object of the statute should be adopted. Hence, this Court does not find any error in the procedure adopted and consequently the Court below is justified in taking cognizance based on the complaint and other material on record. Even otherwise the defect or irregularity not affecting the merits of the matter and which do not prejudice the case of the accused is to be ignored.

In view of the above, these are not the fit cases for quashing the proceedings, Petitions are accordingly dismissed.

The matters are still at the initial stage before the court below. Only, notices are issued against the petitioners to appear before the Court. It is open for them to take contention in accordance with law in the trial court.

This Court places the assistance rendered by Sri S.G. Bhagawan, the learned amicus Curiae.