(2016) 04 MAD CK 0099

In the Madras High Court

Case No : W.P.(MD) No. 13810 of 2009 and W.P. No. 5691 of 2010

Pushparayan Project Director, East Coast Research and Development	APPELLANT
Vs	
Secretary, Government of India, Ministry of Environment and Forests and others	RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 6 FLT 707 : (2016) 4 MLJ 513

Hon'ble Judges : Sanjay Kishan Kaul, C.J. and M.M. Sundresh, J.

Bench : Division Bench

Advocate : E. Vijay Anand, Advocate, for the Appellant; G. Rajagopal, Additional Solicitor General assisted by B. Rabumanohar, SCGPC and Rita Chandrasekar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—W.P.(MD) No. 13810 of 2009:

This public interest litigation has been filed by the petitioner laying challenge to the notification of the 1st respondent dated 1.1.2009, being contrary to the provisions of EIA Notification dated 14.09.2006 and the provisions of the Environmental Protection Act, 1986 qua public consultation.

2. Heard Mr. E. Vijay Anand, learned counsel appearing for the petitioner and Mr. G. Rajagopal, Additional Solicitor General appearing for respondents No. 1 and 2, Mr. Rita Chandrasekar, learned counsel appearing for respondent No. 3 ? Tamil Nadu Pollution Control Board, Mr. P.S. Raman, learned Senior Counsel appearing for respondent No. 4 - Sterlite Industries (India) Limited and Mr. M. Sriram and Mr. Ramesh Venkatachalapathy, learned counsels appearing for respondent No. 5 - State Industries Promotion Corporation of Tamil Nadu Limited.

3. Before going to the issues involved, the background facts would require an

appropriate narration.

4. On 1.8.1994, a No Objection Certificate was issued by the Government of Tamil Nadu in favour of the 4th respondent ? M/s. Sterlite Industries (India) Limited for production of 391 Tonnes of copper per day. The 4th respondent has obtained Environment Clearance from the Ministry of Environment and Forests (MoEF), Government of India on 16.1.1995. Thereafter, "consent to establish" was received from the Tamil Nadu Pollution Control Board on 22.5.1995. It was followed by "consent to operate" dated 14.10.1996 for production. Writ Petitions in W.P.Nos. 15501 to 15503 of 1996 were filed challenging the grant of permission in establishing the plant. The Government of Tamil Nadu issued administrative sanction for setting up of an industrial complex by issuing G.O.Ms. No. 383, Industries dated 25.3.1981 and 233 dated 18.12.1996. Accordingly, by the State Industries Promotion Corporation of Tamil Nadu Limited (in short, "SIPCOT"), an Industrial park was established in the year 1994. It was followed by subsequent acquisitions. An extent of 319.99 acres in which the 4th respondent has set up new Copper Smelter and associated facilities are falling within these lands. Suffice it is to state that the land acquisition process was completed by the SIPCOT ? 5th respondent much before the Environmental Impact Assessment Notification dated 14.9.2006. Notification dated 14.09.2006 of the 1st respondent deals with ''public consultation''. In that, exemption has been granted for all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals. Therefore, the lands allotted to the 4th respondent does not come within the purview, which fact is also reinforced in the counter affidavit filed by the 5th respondent.

5. The 4th respondent filed an application before the 3rd respondent for expansion of copper smelter plant from 391 TPD to 900 TPD on 24.8.2001. A public hearing was conducted on 10.1.2003 followed by environmental clearance granted on 22.9.2004. Consent to operate was issued for expansion on 19.4.2005. Thereafter, applications were submitted for further expansion from 900 TPD to 1200 TPD on 12.9.2005 and 26.12.2005. Thereafter, EIA Notification was issued by the 1st respondent on 14.9.2006. On 15.11.2006, consent to operate was issued by the Tamil Nadu Pollution Control Board, as the cost of the project is less than Rs.50 Crores. It was followed by Environmental Clearance. Similarly, subsequent applications were filed for further expansion from 1200 TPD to 2400 TPD on 25.4.2008 and 12.8.2008. Once again, Environmental Clearance was granted albeit without public hearing in view of the exemption available under the EIA Notification dated 14.9.2006.

6. The Division Bench of this Court was pleased to allow the Writ Petitions filed in W.P. Nos.15501-502 of 1996, 5769 of 1997 and 16861 of 1998 in and by the Order dated 28.9.2010 resulting in quashment of consent to operate. Consequently, the unit was directed to be closed. The Special Leave Petitions(C) Nos. 28116-23 of 2010, which were converted into Civil Appeal Nos. 2776-83 of

2013 were allowed by the Supreme Court on 2.4.2013 (vide Sterlite Industries (India) Limited and others v. Union of India and others, (2013) 4 SCC 575) imposing a condition on the 4th respondent to deposit a sum of Rs.100 Crores with the District Collector, Thoothukudi, meant to be used for the improvement of environment on the "polluter pay principle" with a further direction to the 3rd respondent ? Tamil Nadu Pollution Control Board to continue the monitoring. It is seen that in the said decision the Apex Court dealt with the issues relating to location of industry, green belt, consideration of reports of various Committees comprising of eminent scientists/ experts from M/s. NEERI, CPCB, TNPCB, IIT., etc., Environmental Clearance and nonavailability of sand for certain period.

7. In the meanwhile, the petitioner filed the present W.P.(MD) No. 13810 of 2009 laying challenge to the notification dated 1.1.2009 primarily contending that it suffers from non-adherence of public consultation. An Office memorandum was issued by the 1st respondent on 10.12.2014 clarifying that public consultation is not required for the projects located within the industrial estates notified prior to 14.09.2006 (impugned notification). A challenge was made to the said Office Memorandum in W.P. No. 3514 of 2015 and the said writ petition was dismissed upholding the Office Memorandum. The following paragraphs of the said order would be apposite:

"...2. It is the case of the petitioner that the public consultation process envisaged by the notification dated 14.09.2006 amending the Environment (Protection) Rules, 1986, is sought to be given a go by through the impugned notification. Thus, the impugned notification is alleged to be unreasonable which would permit highly polluting industries which have commenced their operation prior to EIA notification dated 14.09.2006 to even expand their polluting industries going by the plea defying norms and regulations available, as they would not be affected or required to go to through the concept of public participation and public hearing.

3. The counter affidavit filed by the Ministry of Environment and Forests and Climate Change, Government of India, states that settled positions cannot be unsettled and there cannot be a fresh scrutiny requiring public participation or a re-sanction, when it is an existing industry. This is stated to be equally applicable for its expansion. It has been averred that as per Office Memorandum dated 16.05.2014, an interpretation has been given that exemption from public consultation is available only to projects located within industrial estates or parks which have obtained prior Environmental Clearance under EIA Notification, 2006. In this behalf, representations challenging the clarifications were addressed which were referred to an expert committee comprising Dr. S.R. Wate, Director, NEERI, Nagpur, Dr. R.K. Garg, Shri K.P. Niyati, Dr. A.B. Akolkar, Member Secretary, CPCB and Dr. A.L. Aggarwal, Former Deputy Director, NEERI, Nagpur.

4. The Ministry thereafter examined the matter on the recommendations of the Committee and came to the conclusion that the clarification given in Office Memorandum dated 16.05.2014 is not as per the intent of the EIA notification,

2006 since the same was made applicable for Industrial Estates which were existing on that date, like Irrigation and road projects. The National Green Tribunal Bench, Pune, in that context, passed orders dated 08.08.2014. It is therefore that the impugned Notification/Office Memorandum has been issued dealing with the recommendations of the Expert Committee in the context of the representations received. It has been clarified that the original intent of the EIA Notification, 2006 is to exempt from public consultation in the process of Environmental Clearance, Units being established or going for expansion in the Industrial Estates or Parks which were in existence on the date of the EIA Notification, 2006.

5. It has also been stated that the aforesaid is only a clarification and not a fresh exemption and as submitted by the learned Additional Solicitor General, it is always open in a case a particular industry is polluting, to move the NGT in that behalf, even if it is an existing industry, it is only that a general consultative process is not applied in such a situation."

These are all the background facts governing the case.

8. When the matter was taken up for hearing on 23.3.2016, the following issue was framed to be answered by the parties:

"... 2. The only question which is really required to be examined is whether a public consultation is required prior to the Environmental Clearance for expansion, as according to the first respondent (a Communication vide letter dated 01.01.2009 at page-394 of the typed set), the location of the project and the notified SIPCOT Industrial area exempts the requirement of consultation as per Section (III), stage (3), paragraph-(i)(b) of the EIA Notification, 2006......"

9. The learned counsel appearing for the petitioner confining his argument to the issue of public consultation submitted that the Office Memorandum dated 24.8.2009 issued by the Ministry of Environment & Forests would govern the case. A further submission is made that the expanded unit of the 4th respondent is outside the area of the 5th respondent. Beyond this, learned counsel did not make any more submission, perhaps, for the reason that incidentally all the issues have been dealt with in extenso by the Apex Court in Sterlite Industries (India) Limited case (referred supra).

10. Learned counsel appearing for the respondents submitted that on facts, the 4th respondent is situated within the SIPCOT Industrial complex. The Office Memorandum dated 24.8.2009 is not applicable to the case on hand. What is applicable to the 4th respondent is Office Memorandum dated 16.5.2014 issued by the Ministry of Environment & Forests, IA Division. This notification has been further clarified by a subsequent Office Memorandum dated 10.12.2014. As the clarificatory Office Memorandum dated 16.5.2014 has already been upheld by this Court, no interference is required.

11. We have perused all the three Office Memorandums. As rightly submitted by

the learned counsel for respondents, the Office Memorandum dated 24.8.2009, being clarificatory, does not have any bearing to the case on hand. What is relevant is the subsequent clarification dated 16.5.2014. For better appreciation, the said Office Memorandum dated 16.5.2014 is re-produced hereunder:

"Office Memorandum

Subject: Exemption from Public Consultation for the projects/ activities located within the Industrial Estates/Parks.

The undersigned is directed to inform that on the above mentioned subject, the following is clarified by the Ministry of Environment and Forests:

(i) The examination from public consultation, as provided for under para 7(i) III. Stage (3)(i)(b) of EIA Notification, 2006 is only available to the projects or activities located within the industrial estates or parks, which have obtained prior environmental clearance under EIA Notification, 2006, as provided for under item 7(c) of the Schedule.

(ii) The expression ''concerned authorities'' as stated in the aforesaid para of EIA Notification, 2006 implies the competent authorities in the State Governments/ Central Government, which approve setting-up of such industrial estates or parks.

This issues with the approval of the competent authority."

This has been further clarified in the Official Memorandum dated 10.12.2014, which is as under:

"Office Memorandum

Subject: Exemption from Public Consultation for the projects/ activities located within the Industrial Estates/Parks.

Reference this Ministry''s earlier Office Memorandum of even number dated 16.05.2014 on the subject mentioned above.

2. This Ministry has received representations from various Industrial Associations on the above said Office Memorandum. These representations have been considered by the Ministry. Based on the consideration, the undersigned has been directed to clarify that the exemption from public consultation, as provided for under para 7(i) III. Stage(3)(i)(b) of EIA Notification, 2006 is available to the projects or activities or units located within the Industrial Estates or Parks, which were notified prior to 14.09.2006, i.e., the EIA Notification, 2006 coming into force.

3.This issues with the approval of the competent authority."

12. As discussed earlier, the Office Memorandum dated 16.5.2014 has already been upheld by this Court. The said memorandum followed by subsequent one leave no doubt that for the projects or activities located within the Industrial Estates or Parks which were notified prior to the EIA Notification dated

14.09.2006, the exemption from public consultation would apply as provided under Item 7(c) of the Schedule. The Office Memorandums referred above are only clarificatory in nature as considered by the Division Bench in the decision referred supra. On a perusal of the notifications also, we are satisfied that no public consultation is required for the present case.

13. In view of the consistent stand taken by all the respondents including the 5th respondent ? SIPCOT that the 4th respondent is situated within the SIPCOT complex, we have no difficulty in holding that exemption from public consultation would certainly apply. Thus, paragraph 7(i) III Stage(3)(i)(b) of EIA Notification dated 14.09.2006 would certainly apply to the case on hand and therefore the 4th respondent is entitled for exemption from "public consultation process". The petitioner is unable to establish before us that the 4th respondent is not situated within the SIPCOT Complex of the 5th respondent.

14. We may also note one more fact. Conspicuously, the petitioner has not challenged the earlier exemption of public consultation qua expansion. He has also not challenged the consent granted by the 3rd respondent - Pollution Control Board.

15. For the aforesaid reasons, we do not find any merit in W.P.MD. No. 13810 of 2009 and the same stands dismissed. However, it is well open to the petitioner to take appropriate action in the event of any environmental violation on the part of the 4th respondent either by approaching the authorities concerned or moving the National Green Tribunal, if so advised. No costs.

W.P. No. 5691 of 2010:

16. This writ petition has been filed challenging the notification of the 1st respondent dated 22.9.2009 issued in exercise of the powers conferred by Sub-section (2) of Section 6 read with Section 13 of the National Environment Appellate Authority Act, 1997 (Act No. 22 of 1997), authorising a Member to exercise the financial and administrative powers of the Chairperson in his absence and as that of the Vice Chairperson.

17. The petitioner has filed a comprehensive writ petition earlier in W.P.(MD) No. 13810 of 2009 challenging the notification dated 1.1.2009 issued by the 1st respondent in favour of the 4th respondent therein. We have considered the contentions raised on merit and dismissed the said writ petition. Therefore, in fact, nothing survives for adjudication in this writ petition. Even otherwise on merit, we do not find any error as the notification under challenge does give ample power to respondent No. 1 to pass it. The petitioner has not shown any apparent injury caused by the impugned notification and the present situation is also not placed before us. We thus dismiss this writ petition. No costs.

