
(2026) 04 MAD CK 1437

In the Madras High Court

Case No : Criminal Original Petition No. 4888 Of 2025, Criminal Miscellaneous
Petition No. 3166 Of 2025

SRM Institute Of Science & Technology And Other
Vs

APPELLANT

Tamil Nadu Pollution Control Board

RESPONDENT

Date of Decision : 21-04-2026

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 200
Environment (Protection) Act, 1986 — Section 15, 16, 19(A)

Citation : (2026) 04 MAD CK 1437

Hon'ble Judges : A.D.Jagadish Chandira, J

Bench : Single Bench

Advocate : Dr. V. Venkatesan, P. Kumaresan, V. Gunasekaran

Final Decision : Allowed

Judgement

A.D.Jagadish Chandira, J

1. This criminal original petition has been filed to quash the proceedings in C.C.No.166 of 2020 on the file of the Chief Judicial Magistrate Court, Chengalpattu, which was taken cognizance in pursuance of the complaint filed by the respondent under Section 200 Cr.P.C. read with Section 19(a) of the Environment (Protection) Act, 1986, for the offences under Sections 15 and 16, *ibid*.

2. The uncontroverted facts leading to the filing of this criminal original petition could be succinctly stated thus:

2.1 The first petitioner is an institution which runs a medical college and research centre with hospital at S.F.No.153/6A, 153/6B, etc. in Potheri Village and S.F.No.85/9B and 87/1 in Vallanchery Village, Chengalpattu Taluk, Chengalpattu District and the second petitioner is a Trustee of the first petitioner institution.

2.2 According to the respondent, as per the Environmental Impact Assessment Notification, 2006, dated 14.09.2006 (for brevity "the EIA notification") issued by

the Ministry of Environment and Forests, Government of India, construction of new projects or activities listed in the schedule to the said notification shall be undertaken only after the prior environmental clearance from the State-level Environment Impact Assessment Authority (for brevity "SEIAA") or the Central Government, as the case may be. However, on 23.01.2020, when the respondent inspected the first petitioner's premises, it was found that the first petitioner was expanding its buildings to an extent of 71,830.71 sq. mtrs. without obtaining prior permission/clearance from the SEIAA, which is in contravention of the EIA notification. Hence, the respondent issued a show cause notice to the petitioners on 27.01.2020, to which, a reply was sent by the petitioners on 31.01.2020 and not satisfied with the said reply, the respondent filed a complaint against the petitioners on 07.03.2020 before the Chief Judicial Magistrate Court, Chengalpattu, as stated in the opening paragraph, seeking quashment of which, this criminal original petition has been filed.

3. Dr. V. Venkatesan, learned counsel for the petitioners, made the following submissions:

i. When the petitioners had applied to the SEIAA for expansion of existing buildings on 13.04.2018 and had also got a Terms of Reference for the project proposal, in pursuance whereof, the petitioners had paid Rs.23,43,000/- for renovation of Vinjiyambakkam Lake and Rs.16,00,000/- for renovation of Potheri Lake as part of their Corporate Social Responsibility, besides making a payment of Rs.55,00,000/- to Environmental Management Authority of Tamil Nadu (all totalling to Rs.93.98 lakhs) and executing a bank guarantee in favour of the respondent for a sum of Rs.1 crore (under the Polluter Pays principle), the respondent ought not to have filed the complaint, as per the decision of a Coordinate Bench of this Court in TRIL Info Park Ltd. vs. Tamil Nadu Pollution Control Board[2022 SCC OnLine Mad 3850].

ii. Another Coordinate Bench of this Court, in Voorna Property Developers Pvt. Ltd. vs. Tamil Nadu Pollution Control Board[2023 SCC OnLine Mad 4358], has categorically held that the applicant cannot be prosecuted when he has subsequently got environmental clearance and also paid compensation as per the remediation plan and when the same set of facts obtain in the case on hand as well, the impugned proceedings cannot be sustained.

iii. As per paragraph 8(i) of the EIA notification, the SEIAA ought to have communicated its decision on the petitioner's application dated 13.04.2018 within a period of 105 days and as per paragraph 8(iii), *ibid.*, in the event, the decision of the SEIAA is not communicated within the said period, clearance is deemed to have been granted; in the case on hand, since no decision was communicated to the petitioners, the petitioners proceeded with their expansion activities which cannot be found fault with.

iv. When environmental clearance was granted to the petitioners by the respondent on 13.05.2020 and consent to operate was also granted by the

respondent on 13.11.2020 which is a sufficient indication of the fact that the petitioners had satisfactorily complied with the building norms, the impugned proceedings is liable to be quashed.

v. As per the ratio laid down in *Pahwa Plastics Pvt. Ltd. vs. Dastak NGO*[(2023) 12 SCC 774], ex post facto approval cannot be declined with pedantic rigidity and in the light of the said ratio, ex post facto approval cannot be said to be illegal.

vi. In *Vanashakti vs. Union of India*[2025 INSC 718], though a 2 Judge Bench of the Supreme Court restrained the Central Government from issuing circulars/orders/OMs/notifications providing for grant of ex post facto environmental clearance, the said judgment was sought to be reviewed in *CREDAI vs. Vanashakti*[2025 INSC 1326], in which, the judgment under review (JUR), viz., *Vanashakti*, was held to be per incuriam by a 3 Judge Bench of the Supreme Court on the ground that certain paragraphs of *Common Cause vs. Union of India*[(2017) 9 SCC 499], based on which the JUR was decided, were not brought to the notice of the 2 Judge Bench and in such view of the matter, ex post facto approval is not illegal.

vii. In *Indian Council for Enviro-legal Action vs. Union of India*[1996) 3 SCC 212], the Polluter Pays principle was endorsed by the Supreme Court and in this case also, the petitioners having paid a total sum of Rs.93.98 lakhs as a part of discharging their Corporate Social Responsibility (CSR) and also having given a bank guarantee to the respondent for a sum of Rs.1 crore, on the basis of the Polluter Pays principle, the petitioners are entitled to succeed.

viii. As per the Coordinate Bench judgments of this Court in *Tagore Educational Trust vs. the Tamil Nadu Pollution Control Board*[Crl.O.P. Nos.30201 of 2015 and 297 of 2017 decided on 02.11.2023] and *VLB Trust and 2 others vs. The Tamil Nadu Pollution Control Board* [Crl.O.P. Nos.6241 of 2014 etc. batch decided on 22.12.2023]and also as per the Office Memorandum dated 19.05.2002 issued by the Ministry of Environment, Forest and Climate Change, Impact Assessment Division, Government of India, educational institutions are exempted from the requirement of getting environmental clearance and when the first petitioner institution is admittedly an educational institution, the aforesaid two decisions and the Office Memorandum come to the aid of the petitioners.

ix. Other than the construction being made without obtaining approval, the entire construction is within the norms and there is no violation of rules and there is no damage caused to the environment and in such circumstances, the impugned proceedings is nothing but an abuse of process of law and no useful purpose will be served by keeping the same pending.

4. Per contra, Mr. P. Kumaresan, learned Additional Advocate General assisted by Mr. V. Gunasekar, learned Standing Counsel for the respondent Board, by taking this Court through the various correspondences of the SEIAA, the respondent and the Standard Operating Procedure for identification and handling of violation

cases under the EIA notification, contended that since the expansion project undertaken by the petitioners was admittedly more than 20,000 sq. mtrs. which requires environmental clearance as per Sl.No.8(b) in the Schedule to the EIA notification, the respondent issued a show cause notice on 27.01.2020 and the first petitioner's reply dated 31.01.2020 not being satisfactory, the respondent launched the complaint against the petitioners for the offences under Sections 15 and 16 of the Environment (Protection) Act, 1986.

5. He further submitted that when Notification in S.O. 3252(E) dated 22.12.2014 of the Ministry of Environment, Forests and Climate Change, specifically stipulates that the projects or activities shall not include industrial shed, school, college, hostel for educational institution, the first petitioner which is an educational institution with hospital, is not exempted from the said notification.

6. By inviting the attention of this Court to the judgment in *Vanashakti*, supra, learned Additional Advocate General contended that ex post facto clearance is not permissible.

7. Heard the learned counsel on either side and perused the materials placed on record.

8. That the petitioners got ex post facto environmental clearance from the respondent, and the petitioners paid a whopping sum of Rs.93.98 lakhs towards fulfilment of Corporate Social Responsibility, besides executing a bank guarantee for a sum of Rs.1 crore in favour of the respondent towards Terms of Reference as remediation plan (as per the Polluter Pays principle) are beyond cavil.

9. The above being the admitted position, the points that emerge for consideration in this case are set out infra.

i. Whether the ex post facto environmental clearance is legal in the eyes of law?

ii. Whether the petitioners can be prosecuted notwithstanding the total amount of Rs.1,93,98,000/- parted with by them towards the Polluter Pays principle?

iii. Whether the first petitioner institution comes within the definition of the expression "educational institution" and if it is so, is it exempted from getting environmental clearance?

10. Since the points for consideration (i) and (ii) set out supra are intertwined, this Court proceeds to consider the same together as under.

11. The Supreme Court, in *Pahwa Plastics Pvt. Ltd.*, supra, on the validity of ex post facto approval, held as under:

"66. Ex post facto EC should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations. This Court is of the view that the NGT erred in law in directing that the units cannot be allowed to function till compliance of the statutory mandate.

(emphasis supplied)

12. Though the learned Additional Advocate General pressed into service the judgment of a 2 Judge Bench in *Vanashakti, supra*, (JUR), to contend that ex post facto clearance is not permissible, the same deserves to be stated only to be rejected for the simple reason that *Vanashakti, supra*, (JUR), came to be held as per incuriam by a 3 Judge Bench of the Supreme Court in *CREDAI, supra*.

13. In this regard, it will not be out of place to point out that in *TRIL Info Park Ltd., supra*, pressed into service by the learned counsel for the petitioners, the Coordinate Bench of this Court, by quoting the Circular issued by the respondent, as per which, after the successful implementation of the action plan, initiation of prosecution does not arise, held that in the light of subsequent environmental clearance having been obtained by the petitioner and also payment of costs by them by way of discharging Corporate Social Responsibility, the prosecution is an abuse of process of law.

14. It is also pertinent to point out that another Coordinate Bench of this Court in *Voorna Property Developers Pvt. Ltd. supra*, has quoted with approval the decision in *TRIL Info Park Ltd., supra*.

15. That apart, way back in 1996, in *Indian Council for Enviro-legal Action, supra*, the Polluter Pays principle found the acceptance of the Supreme Court. The relevant paragraph from the said decision is as under:

"67. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" principle. [(Historic Pollution - Does the Polluter Pay? by Carolyn Shelbourn - Journal of Planning and Environmental Law, Aug. 1974 issue.)]

"The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'Polluter Pays' principle was promoted by the Organisation for Economic Cooperation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the Polluter Pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed.

Despite the difficulties inherent in defining the principle, the European

Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme [(1987) OJC 328/1] makes it clear that 'the cost of preventing and eliminating nuisances must in principle be borne by the polluter', and the Polluter Pays principle has now been incorporated into the European Community Treaty as part of the new articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the community, and that action is to be based on three principles: the need for preventive action; the need for environmental damage to be rectified at source; and that the polluter should pay."

Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, RPCB or such other agency or authority, as they think fit.

(emphasis supplied by this Court for ease of reference)

16. From a cumulative analysis of the aforesaid decisions of this Court and the Supreme Court, this Court has no reservation in holding that the ex post facto environmental clearance is not impermissible and that the respondent, having accepted the remediation plan of the petitioners sans demur, cannot be heard to say in the counter affidavit that the amount remitted by the petitioners is towards the ecological remediation of the damages already caused under the high level ecological damage. Thus, this Court answers the first two points for consideration in favour of the petitioners.

17. As for the third and last point for consideration, i.e., whether the petitioner is an educational institution, and if yes, whether it is exempted from getting environment clearance, the Office Memorandum issued by the Ministry of Environment, Forests and Climate Change, Impact Assessment Division dated 19.05.2022 provides a complete answer for the latter limb of this question.

18. Though the learned Additional Advocate General predicated his submission in this regard on the Notification in S.O. 3252(E) dated 22.12.2014 issued by the Ministry of Environment, Forests and Climate Change, a thorough analysis of the Office Memorandum dated 19.05.2022 would go to show that the same came to be issued as a clarification to the EIA notification in response to a request to clarify on the definition of "educational institutions". Pursuant to such request,

the Ministry of Education was sought to define the term "educational institutions", in pursuance whereof, the Department of Higher Education, Ministry of Education, informed that albeit different types of educational institutions in terms of school, college, university, technical institutions, etc. have been defined in various statutes for the purpose of recognition, affiliation, accreditation, etc., there is no specific definition for the term "educational institutions". The Department of Higher Education further informed that under the Noise Pollution (Regulation and Control) Rules, 2000, issued under the Environment (Protection) Act, 1986, the term "educational institution" has been defined as a school, seminary, college, university, professional academies, training institutes or other educational establishment, not necessarily a chartered institution and includes not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instruction, including those things essential to be mental, moral and physical development.

19. The stand taken by the respondent in the counter affidavit in this regard is that since the first petitioner is not a mere educational institution but an educational institution with hospital, it is not exempted from getting environmental clearance.

20. This Court cannot buy the aforesaid stand of the respondent for more than one reason. Firstly, even in the "Consent to operate" dated 13.11.2020 issued by the respondent, the first petitioner has been described as a Medical College. Having given consent to operate to the first petitioner which is concededly a Medical College, the respondent cannot take a stand saying since a hospital is also functioning alongside the college, the first petitioner cannot be considered as an educational institution, for the simple reason that there cannot be a medical college without a hospital attached to it. This is because the medical students cannot get the knowhow of what they are imparted in the medical college in the absence of a hospital. In fact, a hospital can be without a medical college attached to it but a medical college cannot function without a hospital attached to it. It is also befitting to observe that both theoretical knowledge and practical knowledge make one a professional and one without the other will serve no purpose.

Secondly, in the complaint launched by the respondent, it was not stand of the respondent that the petitioner cannot be considered as an educational institution since it has got a hospital attached to it. Only in the counter affidavit, the respondent has taken this hyper-technical stand, obviously, as an after-thought. In this regard, it is apposite to allude to the decision in *Mohinder Singh Gill vs. Chief Election Commissioner* [1978) 1 SCC 405], wherein, the Supreme Court unequivocally held as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by

the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16]* :

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

(emphasis supplied by this Court)

22. To be noted, while alluding to the above decision, this Court is cognizant of the fact that it was not rendered in criminal law jurisprudence. Yet, the ratio laid down therein is general in nature and can safely be pressed into service in criminal jurisprudence as well.

23. In view of the discussion made from paragraphs 17 to 22, *supra*, it can safely be held that the first petitioner is an educational institution. Having held so, now, this Court proceeds to consider the latter limb of the third point for consideration. The decisions in *Tagore Educational Trust, supra*, and *VLB Trust, supra*, which have held that educational institutions are exempted from getting environmental clearance, provide a complete answer to this point. Accordingly, the third point for consideration also is answered in favour of the petitioners.

24. All the three points for consideration having been answered in favour of the petitioners, as a sequitur, the prosecution launched against the petitioners is liable to be quashed.

25. However, this Court hastens to point out that the ground urged by the petitioners that the respondent lacks competence to launch the prosecution as per the doctrine of delegates non potest delegare does not cut ice with this Court owing to the judgment of this Court in *TRIL Info Park Ltd., supra*, wherein, it was, *inter alia*, held that the respondent is authorised to launch a complaint in pursuance of the notification in S.O. 394(E) issued under the Environment (Protection) Act, 1986, in and by which the Central Government has authorised the Regional Officers of the State Pollution Control Board to launch a complaint. Though this finding pales into insignificance in view of all the three points for consideration having been answered in favour of the petitioners, this Court thought it fit to consider this question as the same was urged by the learned counsel for the petitioners.

26. In view of the discussion made in paragraphs 9 to 24, *supra*, the impugned proceedings against the petitioners in C.C.No.166 of 2020 on the file of the Chief

Judicial Magistrate Court, Chengalpattu, is quashed.

In fine, this criminal original petition stands allowed. Connected miscellaneous petition is closed.