SUPREME COURT OF INDIA

Mumbai Waste Management Ltd.

Vs.

Secretary of Environment
Government of India & Ors.

S.L.P (Civil).No.18394-18395/2012

(Gyan Sudha Misra and Jasti Chelameswar JJ.)

02.05.2013

ORDER

1. Extensive arguments were advanced by the counsel for the petitioner at the admission stage itself who has assailed the order passed by the High Court of Judicature at Bombay in Writ Petition No.3953/2011 whereby the High Court was pleased to dismiss the writ petition directing the petitioner not to encroach upon the area of operation allotted by respondent No.2, Secretary of Environment, Government of India to any other facility except its own.

2. The petitioner-Mumbai Waste Management Ltd. (shortly referred to as 'MWM') in writ petition No.3953/2011 out of which present SLP arises was issued the letter of award to collect, treat, recycle, reprocess, store and dispose of hazardous waste from the area allotted to the petitioner. Similarly, the respondent No.5 SMS Infrastructure Ltd. was also issued the letter of consent on 27.10.2005 for treatment, storage and disposal facility of hazardous waste from the area allotted to respondent No.5. The areas were determined upon certain geographical criteria. The petitioner - MWM has been allotted the Westernmost Belt of Maharashtra consisting of districts of Thane, Raigad, Ratnagiri and Sindudurg outside Bombay. Similarly, respondent No.5 - SMS had been given other districts to deal with waste management facilities. Since the petitioner - MWM was issued the letter of award for the years prior to respondent No.5, the petitioner MWM felt aggrieved as it curtailed some part of their area of operation as part of those areas were given to respondent No.5 - SMS since it offered more facilities for treatment of hazardous waste by the government.

3. The petitioner - MWM, therefore, challenged the fixing of the territorial jurisdiction and the assignment of the areas of operation by the government-respondent No.2 and claim that it is entitled to collect the hazardous waste of establishment outside the area allotted to it.

4. The principal ground of challenge of the Petitioner-MWM is that under the rules of 2005 in force, the consent to operate was not materially changed under the new rules of 2008 under which the government merely sought to re-fix the territorial area of operation through the orders of respondent No.2. The petitioner-MWM assailed the order of curtailment essentially on the ground that on 24.9.2008, the

Central Government through respondent No.4 promulgated new rules being Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 and under those new rules respondent No.2 was denuded of the power to fix/re-fix the territorial area of operation of the waste management facilities. The petitioner contended that under 2008 rules respondent No.2 is only the monitoring authority to the facilities set up but not to allocate/reallocate the territorial jurisdiction.

5. The High Court was pleased to hold that all that
was required to be adjudicated was whether the action of respondent No.2 modifying the allocated area and refixing the jurisdiction of the two facilities between petitioner - MWM and respondent No.5 - SMS is validly made under the 2008 rules or whether it is in excess of the jurisdiction of their authority. It has been categorically observed therein that the 2008 rules have not been challenged by the petitioner.

6. The High Court on a perusal and assessment of the relevant Rule 5 of the 1989 Rules as also the 2008 Rules in regard to the Hazardous Waste Management Rules finally concluded that under 2008 Rules the person engaged in collection of hazardous waste has to obtain authorization from respondent No.2 in the State of Maharashtra. As such respondent No.2 authorized such facilities to collect waste under the old rules by an application made in a specific format in that behalf. The High Court was pleased to hold that not only the collection and treatment but re-cycling and re-processing, storage and disposal of the waste by such facilities would be only as per the authorization of respondent No.2 in the State of Maharashtra. The High Court found substance in the contention on behalf of respondent No.5 that as the collection and treatment, recycling, re-processing, storage and disposal is under the authorization of respondent No.2, the area of such operation would fall impliedly within the jurisdiction and authority of respondent No.2 to grant and authorize the applicant for collection of waste management. The learned Judges of the High Court also took judicial notice of the fact that the industries augmenting hazardous chemical waste and its effluents requiring proper management for its collection, treatment, re-cycling and disposal had increased manifestly in recent years in keeping with economic advancement and trade in such chemicals. Consequently, more facilities had to be established wherein more players would enter upon such trade. Hence the monopoly of facility was bound to be denuded. The High Court finally was pleased to hold that the area of allocation granted to MWM which are in the Westernmost 4 districts of Maharashtra does not suffer from the ills of unreasonableness of the criteria for allocation. Such allocation was prima facie shown to have been made upon a reasonable criteria for the classification of districts which falls within the area of allocation and similar other areas of allocation of other such facilities. The High Court also noted that the area of allocation had not been challenged by the petitioner nor it had sought to quash or set aside the orders of respondent No.2 dated December 11, 2008 and March 9, 2009 or the respondent No.4 in appeal therefrom dated January 29, 2011. Consequently, the direction to the MWM not to encroach upon the area of other facilities provider like respondent No.5 was required to be passed in favour of respondent No.5 SMS which also had filed a separate writ petition No.5846/2011.
7. Counsel for the petitionervehemently and with utmost force *inter-alia* contended that the High Court was clearly in error in issuing a direction to the petitioner to

confine its area of operation relating to waste management to the four districts, as Maharashtra Pollution Control Board was authorized only to monitor and supervise and could not tinker or interfere with the area of allocation. However, the counsel did not even expressly much less with any clarity said so but adopted a circuitous and vague argument that the respondent had no authority to reduce and expand or allot any area for the business of waste management as it was only competent to authorize the parties to treat the industrial waste and it had no authority or jurisdiction to do anything other than treat the waste product. What is sought to be emphasized by the petitioner's counsel is that the respondents had no authority to allocate the area for operating the business of waste management.

8. Inspite of our persistent query, the counsel for the petitioner could not establish or explain it to this Court that if the respondent No.2 - Maharashtra Pollution Control Board was not authorized to allocate the area as to who exactly would allocate the area and in the process also missed that if that were the position then the petitioner himself would not be left with any authority to operate this business as he has been allotted the area to operate by the same authority who allotted it to the Respondent No.5.

9. However, learned senior counsel for the respondent-SMS, Mr. Patwalia relied upon rule 5 sub rule (2) of Hazardous Waste (Management & Handling) Rules, 1989 and has drawn the attention of this Court to the provision of sub-rule (2) of Rule 5 which lays down as follows:-

> "5. Grant of authorization for handling hazardous wastes.
>
> (2) Every occupier generating hazardous wastes and having a facility for collection, reception, treatment, transport storage and disposal of such wastes shall make an application in Form 1 to the State Pollution Control Board for the grant of authorisation for any of the above activities:
>
> Provided that the occupier not having a facility for the collection, reception, treatment, transport, storage and disposal of hazardous wastes shall make an application to the State Pollution Control Board in Form 1 for the grant of authorisation within a period of six months from the date of commencement of these rules."

10. Learned counsel submitted that the above quoted sub-rule (2) of Rule (5) clearly establishes that authorization to operate or treat waste management would have to be interpreted so as to infer that the authorization included allocation of the area and if this were not so then there would be no difference in the contents of sub rule (1) and sub-rule (2) of Rule 5 and subrule (2) will merely be an imitation of sub-rule (1). In that view of the matter, he submitted, that the Maharashtra Pollution Control Board was clearly competent to determine the area of operation also.

11. However, we have noticed that the High Court has not entered into the question as to whether sub-rule (2) of Rule 5 is the provision from which it could be inferred that the Maharashtra Pollution Control Board is competent to authorize a party to treat and operate waste management and whether it is also competent to allocate

the territory. In that view of the matter, it would not be appropriate to express any view on this aspect of the matter as in that event, it would be judging the issue which was neither raised nor dealt with by the High Court.
In view of this, one of the options available for this Court could have been to remand the matter to the High Court to determine this issue as the same had not been considered earlier. But we refrain and desist ourselves from doing so as we notice that the order is not patently unjust or illegal on the existing facts of this case which could persuade this Court to enter into a determination of the question which had neither been raised nor dealt with by the High Court.

12. There is yet another reason not to enter into this aspect as the High Court has clearly observed that the petitioner has not challenged the orders of respondent No.2 dated December 11, 2008 and March 9, 2009 or order of respondent No.4. The petitioner had merely challenged the order of the appellate authority which in view of the order of respondent No. 2 and respondent No.4 was pleased to hold that the petitioner will have to confine its area of operation to the area of those territories for which an order had been passed in its favour and the area which was allotted to respondent No.5 – SMS will not be encroached by the petitioner. 13. In view of the order of allocation specifically determining the territory which has been allotted to the petitioner and respondent No.5, the order of the High 10 Page 11 Court as also the appellate authority do not need to be interfered with as the High Court appears to be correct and justified while holding that the petitioner would not encroach upon the territory which falls beyond the territory which had been allotted to it. However, since the competence and authority of respondent No.2 and respondent No.4 had not been gone into by the High Court, it is left open to be raised later in an appropriate case specifically for the reason that the High Court has not recorded any finding in regard to the competence of the respondent No.2 and respondent No.4 in regard to allotment of territory or area . As long as the competence and authority of respondent No. 2 and respondent No. 4 is not struck down as illegal and invalid by any court of competent jurisdiction, it is not open for the petitioner to assail their authority for the first time before this Court at the stage of Special Leave to Appeal, specially when this question had neither been raised by the petitioner before the High Court nor dealt with by the High Court out of which the instant matter arises nor the High Court has dealt with the same by rightly observing that the petitioner has never challenged the orders dated December 11, 11 Page 12 2008, March 9, 2009 nor has raised this question before the High Court as to whether respondent No.2 and respondent No.4 had jurisdiction to determine the territory of the area of operation by the operators dealing in waste management. Therefore, as already indicated hereinabove, the petitioner cannot be allowed to assail their authority in the instant special leave petitions in absence of any challenge to question before the High Court. 14. In view of the aforesaid analysis, we find no substance in these special leave petitions and consequently they are dismissed. .....J

dated January 29, 2011 and the appellate authority had clearly observed and rightly so that it had no jurisdiction to determine the question as to whether respondent No.2 - Maharashtra Pollution Control Board and respondent No.4 - Department of Environment, Government of Maharashtra had jurisdiction to allocate territory for conducting the business of waste management. In that view of the matter, we do not think it appropriate to adjudicate and record a finding in regard to the competence and authority of respondent No.2 and respondent No.4. Nevertheless, we find no reason to entertain these special leave petitions by which the High Court had refused to entertain the writ petition assailing the order of the appellate authority which in view of the order of respondent No. 2 and respondent No.4 was pleased to hold that the petitioner will have to confine its area of operation to the area of those territories for which an order had been passed in its favour and the area which was allotted to respondent No.5 - SMS will not be encroached by the petitioner.

13.In view of the order of allocation specifically determining the territory which has been allotted to the petitioner and respondent No.5, the order of the High 10 Court as also the appellate authority do not need to be interfered with as the High Court appears to be correct and justified while holding that the petitioner would not encroach upon the territory which falls beyond the territory which had been allotted to it. However, since the competence and authority of respondent No.2 and respondent No.4 had not been gone into by the High Court, it is left open to be raised later in an appropriate case specifically for the reason that the High Court has not recorded any finding in regard to the competence of the respondent No.2 and respondent No.4 in regard to allotment of territory or area . As long as the competence and authority of respondent No. 2 and respondent No. 4 is not struck down as illegal and invalid by any court of competent jurisdiction, it is not open for the petitioner to assail their authority for the first time before this Court at the stage of Special Leave to Appeal, specially when this question had neither been raised by the petitioner before the High Court nor dealt with by the High Court out of which the instant matter arises nor the High Court has dealt with the same by rightly observing that the petitioner has never challenged the orders dated December 11,
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14. In view of the aforesaid analysis, we find no substance in these special leave petitions and consequently they are dismissed.