

SUPREME COURT OF INDIA

P.Pramila

Vs.

State of Karnataka

Crl.A.No.152 of 2012

(Jagdish Singh Khehar and S.A.Bobde JJ.)

09.04.2015

JUDGMENT

JAGDISH SINGH KHEHAR, J.

The appellants, while being engaged in the business of stocking iron ore, had allegedly violated certain norms prescribed by the Deputy Commissioner under Section 22 of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the 'Air Act'). The allegation against the appellants was, that they had illegally established iron ore stack yard(s) at various places in Uttara Kannada District. It was alleged, that the appellants had not made provisions for pollution control measures, despite repeated requests and instructions given to them, by the officials of the Karnata State Pollution Control Board (hereinafter referred to as the 'Board'). It was therefore, that CC No.546/2006, CC No.547/2006, CC No.548/2006 and CC No.549/2006 were filed before the Judicial Magistrate, First Class-II, Karwar. The proceedings against the appellants were sought to be challenged by petitions filed under Section 482 of the Code of Criminal Procedure, wherein the appellants prayed for quashing of the above proceedings.

A number of similar criminal petitions, filed by the appellants and others, were sought to be disposed of by the High Court of Karnataka, Circuit Bench at Dharwad (hereinafter referred to as the 'High Court'), by a common order dated 7.1.2009. The above order dated 7.1.2009, is subject to challenge in these appeals. A perusal of the impugned order reveals, that the High Court did not examine the merits of the controversy. To dispose of the merits of the claim raised by the appellants before the High Court, it relied upon an earlier order passed by the High Court on 17.04.2007, disposing of Criminal Petition No. 4760 of 2006. Based

thereon, the challenge raised by the appellants before this Court, was also sought to be rejected. The factual position indicated hereinabove is apparent from paragraphs 3 to 5 of the impugned order, which are being extracted hereunder:

"3. The allegations against the respective petitioner is that, while being engaged in the business of stocking iron ore, the petitioners have violated the norms prescribed by the Deputy Commissioner and thus offence un/s 22 of the Pollution Control Act, has been committed and the further allegation in the complaint is that the petitioners have illegally established and operating iron ore stack yard at various places in Uttara Kannada District without the previous consent of the Karnataka State Pollution Control Board (for short, 'the Board') and that the accused petitioners have not provided any pollution control measures despite repeated requests and instruction given to them by the officials of the Board. Based on the complaint lodged by the Board, learned Magistrate of the trial Court directed issuance of process against the petitioners. It is this order of the trial Court that is called in question in all these petitions.

4. At the outset, learned counsel for the respondents submitted that the present petitions are liable to be dismissed as all the grounds urged in the present petitions by each one of the petitioner have been considered by this Court in a batch of petitions which were disposed of on 17.4.2007 in Crl. Petition No. 4760/06 and connected petitions. Therefore, the present petitions are also liable to be dismissed following the aforesaid order of this Court.

5. Learned counsel appearing for the respective petitioner have not disputed the fact of this court having already dismissed the other petitions filed by the petitioners which are similarly placed and all the contentions which are urged in the present petitions have been considered by the learned single Judge while dismissing batch of petitions on 17.4.2007."

During the course of hearing, learned counsel for the appellants invited our attention to the fact, that cognizance of an offence could be taken only by the Board or an officer authorised by the Board, in terms of Section 43 of the Air Act. Section 43 afore-mentioned, was the primary basis of the challenge raised before us. The same is being reproduced hereunder:

"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.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

Provided that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest."

Our attention has been pointedly invited to sub-section (1) of Section 43 of the Air Act. Having perused the same, there cannot be any doubt, that when the authorities decided to initiate proceedings under the provisions of the Air Act, the complaint could have been made either by the Board or by an officer authorised by the Board. The question which has to be adjudicated upon (as has been raised by the appellants), was whether, the complaint in furtherance of which CC No. 546/2006, CC No.547/2006, CC No.548/2006 and CC No.549/2006, had been filed by the Board, or an officer authorised by the Board. To be valid, in terms of the mandate of Section 43(1) of the Air Act, it ought to be filed either by the Board or by an officer authorised by the Board.

Insofar as the above mentioned aspect of the matter is concerned, it is not a matter of dispute, that vide notification/resolution dated 29.3.1989, the Karnataka State Pollution Control Board delegated certain powers to the Chairman of the Board. The aforesaid resolution (limited to the instant issue), is being reproduced below: "subject : Delegation/Empowering of Technical, No.63.11 Administrative and Finalcial 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 under Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 23 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 under Section 32(1)(c) of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 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 under Section 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 Board could delegate the above power to the Chairman of the Board, because Section 43(1) of the Air Act, allowed it to do so. In view of the conclusions recorded above, consequent upon the passing of the resolution dated 29.3.1989, the complaint under Section 43(1) of the Air Act, could have been filed either by the Board or by its Chairman.

According to the learned counsel for the respondents, proceedings came to be initiated by an order dated 4.4.2006 passed by the Chairman of the Karnataka State Pollution Control Board. Relevant extract of the above order is reproduced below:

"In view of the above, I do here by authorize the Regional Officer, Karwar to initiate criminal action under Section 37 of Air (Prevention and Control of Pollution) Act, 1981 by filing criminal case in the competent court against 17 occupiers of the Iron Ore Stack Yards located in and around the Karwar, Ankola and Jolda Taluks of Uttara Kannada District as per the list enclosed as Annexure-1."

Having perused the aforesaid communication it emerges, that the Chairman of the Board authorised the Regional Office, Karwar to initiate criminal action under Section 37 of the Air Act, by filing criminal cases in Courts having jurisdiction to deal with them, against 17 owners of iron ore stack yards, located in and around the Karwar, Ankola and Jolda Taluks of Uttara Kannada District. It is not possible

to accept, the contention of the respondents, that initiation of the proceedings on the basis of the above order dated 4.4.2006 can be treated as compliance of the mandate contained in Section 43(1) of the Air Act, because the same has reference to a complaint made by the "Board or any officer authorised in this behalf by it".

In compliance with the order of the Chairman dated 4.4.2006, the Regional Officer(Deputy Environmental Officer Sri Gopalakrishna B. Sanatangi, filed complaints before the Judicial Magistrate, First Class-II, Karwar. It is natural therefore to conclude, that the complaint against the appellants was neither filed by the Board or its Chairman, but was filed by the Regional Officer (Deputy Environmental Officer).

Section 43 of the Air Act has already been extracted hereinabove. It is apparent therefrom, that Courts would take cognizance of complaints filed by the Board, or any officer authorised by the Board, in that behalf. The notification/resolution dated 29.3.1989 indicates, that the officer authorised was the Chairman of the Board. The Board could delegate the above power to the Chairman of the Board, because Section 43(1) of the Air Act, authorised the Board to do so. In that view of the matter, either the Board or the Chairman of the Board could have filed the complaints in terms of the mandate contained in Section 43(1) of the Air Act. The power to file the complaint could not be exercised by any other authority/officer. Under the principle of 'delegatus non potest delegare', the delegatee (the Chairman of the Board) could not have further delegated the authority vested in him, except by a clear mandate of law. Section 43 of the Air Act vested the authority, to file complaints with the Board. Section 43 afore-mentioned, also authorised the Board to delegate the above authority to any "officer authorised in this behalf by it". The "officer authorised in this behalf" was not authorised by the provisions of Section 43 of the Air Act, or by any other provision thereof, to further delegate, the authority to file complaints. The Chairman of the Board, therefore, had no authority to delegate the power to file complaints, to any other authority, for taking cognizance of offences under the Air Act. It is apparent, that the determination to initiate action against the appellants, and other similarly placed persons, against whom action was proposed to be taken, by the Chairman of the Board, vide his order dated 4.4.2006, was not in consonance with law. Annexure P-11, appended to Criminal Appeal No. 152/2012 reveals, that the complaint was filed, and the proceedings were initiated before the Judicial Magistrate, First Class-II, Karwar, by the Regional Officer(Deputy Environmental Officer) Sri Gopalakrishna B. Sanatangi, in his capacity as a complainant. The Regional Officer(Deputy Environmental Officer) Sri Gopalakrishna B. Sanatangi, had no jurisdiction to prefer such complaints. Accordingly, we are of the view, that the afore- stated

complaints dated 28.04.2006 are liable to be set aside, on the instant technical ground itself. Ordered accordingly.

Since the petitions filed by the appellants, under Section 482 of the Criminal Procedure Code, are being accepted merely on a technical ground, we hereby direct the competent authority, namely, the Board (or the Chairman of the Board) to re-initiate the above proceedings, in consonance with the provisions of Section 43(1) of the Air Act. The process shall positively be re-initiated within two months from today. In case of failure to initiate fresh proceedings within the time stipulated hereinabove, it shall be imperative for the competent authority, to place the reasons for not doing so before this Court, on the expiry of a period of two months. Extension of time, if needed, shall also be sought by the authorities from this Court, by moving an appropriate interlocutory application. Needless to mention, that on re-initiation of the proceedings, the concerned authorities, and the Courts below, shall not take into consideration any observations recorded by us, or the Courts below, while adjudicating upon the merits of instant controversy. It shall be open to the parties to raise all contentions, as may be available to them, in consonance with law.

The instant appeals are allowed in the aforesaid terms.