

JOLLY GEORGE AND ANR.

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v.

GEORGE ELIAS AND ASSOCIATES AND ORS.

(Special Leave Petition (Civil) Nos. 1333-1335 of 2022)

APRIL 12, 2023

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[V. RAMASUBRAMANIAN AND PANKAJ MITHAL, JJ.]

Kerala Micro Small and Medium Enterprises Facilitation Act, 2019 – ss. 2, 5, 6 and 10 – Kerala Panchayat Raj Act, 1994 – Kerala Panchayat Building Rules, 2019 – Rule 68 – ‘GEA’ purchased Hot Mix Plants for undertaking road works – They obtained an acknowledgement certificate u/s. 5 of the Act of 2019 and submitted an application to the Panchayat for the grant of a license for installation of the Plant – They obtained “Consent to Establish” from the Kerala State Pollution Control Board – Their application before the Panchayat was rejected by the Gram Panchayat – Held: It is admitted that ‘GEA’ have obtained consent to establish, from the Kerala State Pollution Control Board and also obtained an Acknowledgment Certificate under s. 5(3) of Act of 2019 – Acknowledgement certificate shall have effect as if it is an approval as defined in s. 2(c) – S. 10 of the Kerala MSME Act not only confers overriding effect to the Act on other laws, but also makes a specific reference to the Act of 1994 – s. 10(2) of the Kerala MSME Act makes it clear that the provisions of the Act of 1994, shall be read as amended to be in conformity with the provisions of the Kerala MSME Act – Thus, the prayer of ‘GEA’ is deserves to be granted in light of the statutory prescription.

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Disposing of the appeals, the Court

HELD: 1. A bare reading of the order of the Single Judge and the Division Bench would show that the most vital aspect has been lost sight of. Admittedly, the writ petitioners have obtained consent to establish, from the Kerala State Pollution Control Board. It is also admitted that the writ petitioners have obtained an Acknowledgment Certificate under Section 5(3) of the Kerala MSME Act. It is seen from Section 6(1) extracted above that an Acknowledgement Certificate shall have effect as if it is an approval as defined in Section 2(c). What is held against

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- A the writ petitioners today is the requirement of a permission under the Act of 1994. But Section 10 of the Kerala MSME Act not only confers overriding effect to the Act on other laws, but also makes a specific reference to the Act of 1994. The prayer made by the writ petitioners in their second writ petition, deserved to be granted, clearly in the light of the statutory prescription. [Paras 8, 9, 10 and 11][417-G-H; 418-A, E, G; 419-E]
- B 2. The Kerala MSME Act overrides the 1994 Act and a few other local enactments. This is why the writ petitioners have taken “consent” from the Pollution Control Board. Once consent is taken from the Pollution Control Board, the necessity for reading down Section 10 of the Kerala MSME Act, for the purpose of protecting the environment, does not arise. [Para 16][420-E-F]
- C *T.N. Godavarman Thirumulpad vs. Union of India and Ors. (2011) 7 SCC 338 : [2011] 7 SCR 954; Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash Lal & Ors. (2020) 13 SCC 234 : [2019] 14 SCR 659; A.P. Pollution Control Board vs. Prof. M.V. Nayudu (Retd.) and Ors. (1999) 2 SCC 718 : [1999] 1 SCR 235 – referred to.*
- D *T.N. Godavarman Thirumulpad vs. Union of India and Ors. (2011) 7 SCC 338 : [2011] 7 SCR 954; Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash Lal & Ors. (2020) 13 SCC 234 : [2019] 14 SCR 659; A.P. Pollution Control Board vs. Prof. M.V. Nayudu (Retd.) and Ors. (1999) 2 SCC 718 : [1999] 1 SCR 235 – referred to.*

Case Law Reference

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| E | [2019] 14 SCR 659 | referred to | Para 15 |
| | [1999] 1 SCR 235 | referred to | Para 15 |
| | [2011] 7 SCR 954 | referred to | Para 17 |
| F | CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2764-2766 of 2023. | | |

From the Judgment and Order dated 09.12.2021 of the High Court of Kerala at Ernakulam in WA Nos. 607, 756 and 741 of 2021.

With

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| G | Civil Appeal No. 2767 of 2023. |
| | M/s. Kmnp Law, Ms. Uttara Babbar, V Shyamohan, Ms. Anshika Bajpai, Martin G George, Ms. Riya Kalra, K. Parameshwar, Harish Vasudevan, Ms. Arti Gupta, Ms. Kanti, Kuriakose Varghese, C. K. Sasi, |

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Abdulla Naseeh V T, Ms. Meena K Poulose, M/s. Lawfic, Sriram A
Parakkat, M.S. Vishnu Sankar, Adithya Santosh, Ms. Athira G. Nair,
Sreenath S, Jogy Scaria, Pradeep Kumar Gupta, Ms. Beena Victor, Vivek
Guruprasad Ballekere, Keerthipriyan E, Ms. M Priya, Advs. for the
appearing parties.

The Judgment of the Court was delivered by B

V. RAMASUBRAMANIAN, J.

Leave granted.

2. George Elias and Associates, which is respondent No.1 in the first set of three appeals and which is the appellant in the fourth appeal, filed two writ petitions in WP (C) Nos.10381 and 17920 of 2020 on the file of the High Court of Kerala at Ernakulam praying respectively for (i) setting aside an Order of the Committee of the Kalloorkad Gram Panchayat refusing to grant license to them for establishing a Hot Mix Plant; and (ii) for a declaration that by virtue of the certificate granted under the Kerala Micro Small and Medium Enterprises Facilitation Act, 2019¹, all licenses and approvals including the license of the Panchayat should be deemed to have been obtained. C D

3. By a common order dated 18.03.2021, the learned Judge of the High Court of Kerala disposed of both the writ petitions permitting the writ petitioners to prefer an application for permission under Rule 68 of the Kerala Panchayat Building Rules, 2019² within two weeks and further directing the Secretary of the Panchayat to grant necessary permission subject to the conditions, if any, that may be imposed by the Panchayat. The learned Judge held that inasmuch as the writ petitioners had obtained consent from the State Pollution Control Board, the Secretary of the Panchayat cannot refuse permission under Rule 68 of the Rules, 2019, though he can impose general conditions. E F

4. Challenging the said order of the learned Judge, three intra-court appeals came to be filed. One of the intra-court appeals was filed by the writ petitioners themselves, as they were not satisfied with the outcome. The other writ appeals were filed by some people in the locality, who objected to the establishment of the Hot Mix Plant. G

¹ For short, "Kerala MSME Act"

² For short, "Rules of 2019"

- A 5. By a common order dated 09.12.2021, the Division Bench of the Kerala High Court dismissed the appeals. Therefore, people of the locality have come up with the first three appeals challenging the common order passed by the Division Bench of the Kerala High Court in the three intra-court appeals. The writ petitioners have also come up with one appeal, which is the fourth one, as they are aggrieved by not getting full relief from the High Court.
- B 6. We have heard the learned counsel appearing for all the parties.
- C 7. The controversy to be resolved in these appeals can be better understood if we take a glance at the brief facts leading to this litigation.
- D C These brief facts are as follows:
- E (i) George Elias and Associates, whom we shall describe as the writ petitioners, are engaged in undertaking road works in different parts of the State of Kerala. They purchased Hot Mix Plants for carrying out the road works for which they bagged contracts.
- F (ii) By an Agreement dated 06.03.2019, the writ petitioners were awarded the contract for road work in Cherthala Aroorkutty. Within a few months, the Kerala MSME Act came into force and hence the writ petitioners obtained what is known as an Acknowledgement Certificate under Section 5 of the said Act.
- G (iii) The writ petitioners also submitted an application to the Kalloorkad Panchayat for the grant of a license, for installation of the Hot Mix Plant. The application was made on 05.02.2020.
- H (iv) On 04.03.2020 the Kerala State Pollution Control Board granted “*Consent to Establish*”.
- G (v) Since there was no response from the Panchayat, to the application for license, the writ petitioners claimed the benefit of the deeming provision under Rule 12(3) of the Kerala Panchayat Raj (Issue of License to Factories, Trades, Entrepreneurship Activities and Other Services) Rules, 1996. Accordingly, the writ petitioners transported the equipments for installing the Hot Mix Plant, to the property from which they proposed to operate it.

- (vi) Objections were raised by some members of the locality owing allegiance to some political parties which led to a meeting of conciliation. However, the Gram Panchayat rejected the application by an Order dated 12.05.2020. A
- (vii) Therefore, challenging the said order dated 12.05.2020 the writ petitioners filed the first writ petition bearing WP (C) No.10381 of 2020. The writ petitions were admitted and an interim stay of operation of the order of the Gram Panchayat was also granted. B
- (viii) Subsequently, a few writ petitions came to be filed, the details of which may not be necessary to be recorded here. Suffice it to say that in one of the writ petitions, the High Court granted police protection to the writ petitioners to set up the Plant, after getting consent from the Pollution Control Board. C
- (ix) Eventually, the writ petitioners filed the second writ petition seeking a declaration that by virtue of the Acknowledgement Certificate obtained under the Kerala MSME Act, a license under the Kerala Panchayat Raj Act, 1994³ was not necessary. D
- (x) The learned Single Judge, without actually getting into the question relating to the overriding effect of Kerala MSME Act, held that the Hot Mix Plant of the writ petitioners was a portable equipment and that it does not fall within the definition of the word “*building*” under the Rules of 2019. The learned Single Judge also held that after the grant of “*Consent to Establish*” by the Pollution Control Board, permission of the Panchayat was only formal. This view was also confirmed by the Division Bench. This is why the parties have landed up before this Court. E F

8. A bare reading of the order of the learned Single Judge and the Division Bench would show that the most vital aspect has been lost sight of. Admittedly, the writ petitioners have obtained consent to establish, from the Kerala State Pollution Control Board. It is also admitted that the writ petitioners have obtained an Acknowledgment Certificate under

³ For short, “Act of 1994” H

- A Section 5(3) of the Kerala MSME Act. Section 6 of the Kerala MSME Act reads as follows:
- “6. *Effect of the Acknowledgement Certificate.*—(1) An acknowledgment certificate issued under section 5 shall, for all purposes, have effect as if it is an approval as defined in clause (c) of section 2, for a period of three years from the date of its issuance and after the expiry of the said period of three years, such enterprise shall have to obtain required approvals as defined in clause(c) of section 2, within six months from the date of such expiry:
- B Provided that the acknowledgement certificate shall not entitle a person to use a land contrary to the provisions contained in the Kerala Conservation of Paddy Land and Wetland Act, 2008 (28 of 2008) and it shall also not entitle a person to use the land in deviation to the land use specified in the master plan notified under the Kerala Town and Country Planning Act, 2016 (9 of 2016), wherever such plan is in force.
- C (2) During the period of three years specified in sub-section (1), no competent authority shall undertake any inspection for the purpose of, or in connection with, any approval as defined in clause (c) of section 2.”
- D E 9. It is seen from Section 6(1) extracted above that an Acknowledgement Certificate shall have effect as if it is an approval as defined in Section 2(c). Section 2(c) reads as follows:-
- “2.(c) “approval” means licenses, permissions, approvals, clearances, registration, consents, no objection certificate and the like, required under any State law in connection with the establishment or operation of micro small and medium enterprise in the State;”
- F G 10. What is held against the writ petitioners today is the requirement of a permission under the Act of 1994. But Section 10 of the Kerala MSME Act not only confers overriding effect to the Act on other laws, but also makes a specific reference to the Act of 1994. Section 10 of the Kerala MSME Act reads as follows:
- “10. *Overriding effect of this Act on other laws.*— (1) The provisions of this Act shall have overriding effect, notwithstanding
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anything inconsistent therewith contained in any other law, for the A time being in force.

(2) In particular and without prejudice to the generality of the foregoing provisions of this Act, such provisions shall have effect notwithstanding anything inconsistent therewith contained in the following enactments and the provisions of these enactments shall B be read as amended in conformity with the provisions of this Act, namely:—

1. The Kerala Panchayat Raj Act, 1994 (13 of 1994)
2. The Kerala Municipality Act, 1994 (20 of 1994) C
3. The Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960)
4. The Kerala Lift and Escalators Act, 2013 (18 of 2013)
5. Travancore - Cochin Public Health Act, 1955 (XVI of 1955) D
6. Madras Public Health Act, 1939 (3 of 1939)"

11. Therefore, the prayer made by the writ petitioners in their second writ petition, deserved to be granted, clearly in the light of the statutory prescription. But unfortunately, both the learned Single Judge and the Division Bench completely overlooked this most vital aspect. E

12. However, Shri K. Parameshwar, learned counsel appearing for the objectors contended that two issues arise for consideration namely (i) whether a self-certification obtained by respondent No.1 under the Kerala MSME Act is sufficient in itself to set up a Hot Mix Plant; and (ii) whether in the light of such self-certification, no permission from the Panchayat is required under the Act of 1994 and Rules of 2019. F

13. According to the learned counsel for the objectors, Rule 3 of the Kerala Micro Small Medium Enterprises Facilitation Rules, 2020, requires all persons seeking Acknowledgment Certificate under Section 5(3) to furnish a duly filled self-certification in Form-I. This form contains an undertaking from the applicant to comply with the Kerala Panchayat Building Rules, 2019 and hence it is contended that the writ petitioners cannot avoid the requirement of permission from the local Panchayat. G H

- A 14. But the said argument cannot be sustained for the simple reason that the Rules framed under the Act cannot annul the effect of the statutory provisions. Section 10(2) of the Kerala MSME Act makes it clear that the provisions of the Act of 1994, shall be read as amended to be in conformity with the provisions of the Kerala MSME Act. Therefore, the objectors cannot fall back upon the Rules to nullify the effect of the provisions of the Act.
- B 15. It is contended by Shri K. Parameshwar, learned counsel that though his clients have not challenged the constitutional validity of Section 10 of the Kerala MSME Act, this Court can read down the overriding and absolute clauses in public interest. According to the learned counsel, the Panchayat has a public duty to safeguard the areas and persons within its jurisdiction against environmental pollution and that the precautionary principle requires to be applied. The learned counsel relied upon the decisions of this Court in *Municipal Corporation of Greater Mumbai (MCGM) vs. Abhilash Lal & Ors.*⁴ and *A.P. Pollution Control Board vs. Prof. M.V. Nayudu (Retd.) and Ors.*⁵
- C 16. But the above argument is completely misconceived. Section 10 of the Kerala MSME Act does not override the provisions of any of the pollution control laws such as Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974. The Kerala MSME Act overrides the 1994 Act and a few other local enactments. This is why the writ petitioners have taken “consent” from the Pollution Control Board. Once consent is taken from the Pollution Control Board, the necessity for reading down Section 10 of the Kerala MSME Act, for the purpose of protecting the environment, does not arise.
- D 17. The argument that Panchayat being the grassroot institution, has the right of participation in decision making, is again misconceived. All Panchayats want motorable roads. But if they do not want road construction materials to be manufactured within their Panchayat, we do not know where from these materials can be imported. Therefore, the reliance placed by the learned counsel for the objectors on the decision of this Court in *Lafarge Umiam Mining Private Limited in T.N. Godavarman Thirumulpad vs. Union of India and Ors.*⁶, is also misplaced.
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- ⁴(2020) 13 SCC 234
⁵(1999) 2 SCC 718
H ⁶(2011) 7 SCC 338

18. In fact, arguments were advanced also on the question whether the Hot Mix Plant is portable or whether it is a temporary or permanent structure etc. But we do not think that it is necessary to go into the said question, because the Acknowledgement Certificate obtained under the Kerala MSME Act, alone is sufficient to clinch the issue in favour of the writ petitioner.

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19. In view of the above, the writ petitioner who is respondent No. 1 in three of these appeals and the appellant in one of these appeals is entitled to the reliefs sought in both the writ petitions. Accordingly, the appeal filed by the writ petitioner George Elias and Associates is allowed, the impugned orders are set aside and the writ petitions filed by George Elias and Associates are allowed. The appeals filed by the objectors, namely, the people of the locality are dismissed. There will be no order as to costs.

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Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

Appeals disposed of.