

9, 10 & 11

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on 16th January, 2009

+ W.P. (C) 7516/2007, W.P. (C) 7517/2007, W.P. (C) 7605/2007

W.P. (C) 7516/2007

REGENT AUTOMOBILES P.LTD.

W.P. (C) 7517/2007

MULTAN AUTOMOBILE ENGINEERS

W.P. (C) 7605/2007

FLYING FASHIONS

..... Petitioners

Through : Mr. Dinesh Agnani with
Ms. Leena Tuteja, Advocate.

versus

GOVT. OF N.C.T. OF DELHI THR.
SECRETARY & ORS.

..... Respondents

**CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

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|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

S.RAVINDRA BHAT, J. (ORAL)

1. These Writ Petitions were heard together, with consent of the counsel for the parties as they involved common questions of fact and law.

2. All the petitioners claim to be aggrieved by the directions issued by the Joint Commissioner of Industries acting on behalf of the Commissioner **(the 2nd respondent and 3rd respondent, hereafter referred to collectively as 'the Commissioner')**, requiring them to furnish bank guarantees for specified amounts.

3. Briefly the facts are that the petitioners are industrial units engaged in manufacture. In one case (WP (C) 7605/07), the petitioner is involved in garment manufacture; in the other two cases, the petitioners deal in automotive parts. All of them claim that the respondents are an "appropriate authority" for the purpose of collecting apportionment cost of Common Effluent Treatment Plant (hereafter referred to as 'Plant'). Their averments are that a Common Effluent Treatment Plant Society was formed in 1996 to achieve the objective of setting up of plants and their administration. The Society sets up plants in various industrial areas and apportions costs from its members. The petitioners contend that the measures taken by the respondents are part of the cleaning up process of the environment including cleaning effluents in the Yamuna River.

4. As a result, the National Capital Territory of Delhi enacted the Delhi Common Effluent Treatment Plants Act, 2000 (hereafter 'the Act') with the object of recovering dues towards setting up of such plants in Industrial estates. The petitioners refer to various provisions of the Act concerning setting up of an appropriate authority, its functions and the powers vested in

it to issue orders and directions. They also refer to Rules framed in 2001 (hereafter 'the Rules') under the Act prescribing the formula for apportionment of plants and their maintenance.

5. The petitioners complain that the costing method adopted by the authority is never transparent and has been arbitrary. Thus the Society has been charging Rs. 100/- per sq. mt. together with *ad hoc* amounts depending on the size of the industrial unit. It is alleged that the petitioners have made complete payment towards apportionment of costs and have also complied with all further demands by the society. They advert to installation of effluent treatment plants in view of their business activities. They contend about various inspections by the Commissioner from time to time; and that as and when any deficiency in regard to maintenance of the plant was pointed out, they were rectified. In the circumstances, they now impugn the order dated 27.9.07, which refers to a visit by a joint inspection team on 10.8.2007 to their premises and further alleges that irregularities were noticed in regard to the observance of parameters and norms for polluting industries. After giving notice, to which the petitioners replied, the respondents directed them to furnish bank guarantees for various sums. In W.P. (C) 7605/07, the amount of bank guarantee sought for is Rs. 5 lakhs; in W.P. (C) 7517/07 it is Rs. 3 lakhs and in W.P. (C) 7516/07, it is Rs. 5 lakhs.

6. The petitioners contend that the directions to furnish bank guarantees for specific amounts are without any legal authority and in any event based

on utterly vague premises. It is submitted that if there was violation of any norms, they could have been visited with consequences spelt out under the Act or under other laws such as, Water (Prevention and Control of Pollution) Act; Air (Prevention and Control of Pollution) Act; or the Hazardous Wastes Act. The petitioners contend that the provisions of the Act do not empower the CEPT Society or the respondents to issue vague or open-ended directions of the kind impugned in this case. All that the respondents are empowered to do in case of non-compliance with the provisions, is to levy penalty upon the errant unit, after holding appropriate enquiry as is deemed necessary. It is claimed that the power to issue directions has to be exercised reasonably and not contrary to express provisions of the Act.

7. The respondents contend that the Act empowers the authorities to seek information under Section 8 of the Act; the authorities are also enabled to enter and inspect the premises by virtue of Section 9. Section 16 prescribes that the authority can give appropriate directions. It is contended that these provisions are sufficient pointers to the respondents' amplitude of powers, which extend to issuing directions to the concerned Unit, to furnish bank guarantees.

8. It was contended during the hearing that the surveys conducted by the Delhi Pollution Control Committee (DPCC) showed that many Units were discharging effluents directly in to the conveyance system without pre-treatment resulting in high Bio-Oxygen Demand and Chemical Oxygen

Demand. This was also corroborated in the analysis report of the CETP Plant. A joint inspection team visited the premises of various units. This inspection and survey of 25 units disclosed that 17 of them were operating without plant and the sludge they were supposed to maintain were missing. Those plants were given show cause notices, replies to which were found unsatisfactory. On account of these facts, the impugned directions were issued.

9. The above discussion would show that the controversy between the parties pertains to the impugned directions issued by the respondents, requiring the petitioners to furnish bank guarantees for various determined amounts. The impugned orders are in identical format except so far as the amounts are concerned. One such order made in the case of petitioner in W.P. 7605/07 is extracted below: -

"1. Whereas, during the visit of Joint Inspection Team on 10.8.07 at the premises of M/s. FLYING FASHIONS certain irregularities were noticed, that of non-observance of parameters/norms prescribed for such polluting industries for pre-treating of effluent and other violations as communicated vide Notice No.1029 dated 13.8.2007.

2, Whereas, the said occupier has filed written reply on 21.8.2007 explaining the reasons etc. After carefully going through the documents submitted by the occupier, the reasons/facts have been found vague/unsatisfactory as such no remedial measures were promised to observe the parameters of Pollution Control Authorities as well as provisions of CETP Act & Rules.

"It is pertinent to mention here that under article 21 of the Constitution of India the wholesome environment is the fundamental right of every citizen which needs a right living atmosphere congenial to human existence as interpreted by the

Hon'ble Supreme Court". Moreover toxic pollutants cannot be gifted to the public at the cost of others benefit.

3. Therefore, the undersigned as per powers conferred upon him under Section 16 of the CETP Act 2000 read with Rule 10 of CETP Rules 2001 now issues following direction in connection with the said notice dated 13.8.2007.

(I) That, the pre-treatment of the effluent should be as per the prescribed parameters by way of operating the apparatus/ETP installed at the premises regular non-operation is resulting higher level of BOD, COD & TDS etc. at the CETP, which is difficult to control without pre-treatment before discharging the effluent into the Conveyance System by the occupiers.

(II) That, no effluent should be directly discharged into the main sewer line other than the conveyance system.

(III) That, O&M charges must be paid by the occupier to the CETP Society regularly.

(IV) That, hygienic working conditions must be maintained for & non skilled/workforce as per labour Laws.

(V) That, the sludge should be stored in sealed containers and must ensure of the proper stock of the Chemicals.

(VI) That, there should be proper dosing of the chemical in the pretreatment process so that parameters are met in the Analysis report.

(VII) That, only qualified operators should be engaged to operate the apparatus/ETP and a proper logbook be maintained about working hours & sludge generated.

(VIII) That, quarterly returns must be filed by the occupier to the Appropriate Authority filing all the information correcting & timely.

*(IX) That, as a guarantee to observe the above mention conditions, a bank guarantee of Rs. 5,00,000/- (Five Lakhs only) should be executed by the said Occupier in the name of **"the President of India"** through Secretary-cum-Commissioner, Department of Industries Govt. of Delhi valid for 2 years to be submitted to the Appropriate*

Authority within 10 days from the issue of this letter. In case of non-compliance, directions issued on 13.8.2007 will be made confirmed and the Authorities will be requested for disconnection of electricity and water of the said defaulter.”

10. The petitioners contend that provisions of the Act do not enable or empower the respondents to issue such directions; the respondents assert that it does. It would, in the circumstances, be necessary to discuss some of its provisions and also extract the relevant provisions of the Act. The Delhi Common Effluent Treatment Plants Act was enacted in the year 2000. Its avowed objects are to provide for recovery of dues - in respect of capital and recurring cost of Common Effluent Treatment Plants set up in industrial estates - as arrears of land revenue. Section 2 (2) defines “appropriate authority” as Commissioner of Industries or such other officer not below the rank of Joint Director; Section 2 (3) states that ‘CETP’ means Common Effluent Treatment Plant. By Section 3 an obligation is cast on the industrial estates, either themselves or with one or more industrial estates in Delhi, to constitute a registered CETP Society, duly approved by the appropriate authority, to set up and operate a CETP Plant for the participating Units. Section 6 defines the functions of the appropriate authority; the main function is to recover any unpaid dues from occupier(s), to ensure the proper setting up operation and maintenance of CETPs in Delhi. These functions include the apportionment of cost amount from occupiers, recoveries of dues from such persons and taking other steps towards achieving the object of the

Act. Section 7 provides for levy and collection of apportioned costs.

Sections 9, 11, 16, 17 and 18 read as follows: -

“9. Power of entry and inspection – Subject to the provisions of this clause, any person empowered by the appropriate authority in this behalf shall have a right at any time to enter with such assistance as he considers necessary any place for the purpose of performing any of the functions of the appropriate authority as may be prescribed in rules.

11. Penalty for non-payment within the specified time – If any amount payable by any person is not paid within the date specified in the order it shall be deemed to be in arrears and the appropriate authority may after such inquiry as it deems fit, impose on such person a penalty not exceeding the amount in arrears.

16. Power to give directions – Notwithstanding anything contained in any other law, but subject to the provisions of this Act, the appropriate authority may, in exercise of its powers and performance of its functions under this Act, issue any directions in writing to any occupier, society, person, officer or authority, and such occupiers, society, person, officer or authority shall be bound to comply with directions.

Explanation - For the avoidance of doubts, it is hereby declared that the power to issue directions under this Clause includes the power to direct –

- (a) the closure, prohibition or regulation of any industry, establishment, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service.

17. Failure to comply with directions – (1) Whoever fails to comply with the directions given under sub clause (2) or sub-clause (3) of clause 8 within such time as may be specified in the direction shall be liable to pay a penalty which may extend up to ten thousand rupees and in case the failure continues, with an additional penalty which may extend up to five hundred rupees for every day during which such failure continues after the imposition of the penalty of the first such failure.

(2) Whoever fails to comply with any direction issued under clause 15 shall, in respect of each such failure, be liable to pay a penalty

which may extend up to thirty thousand rupees and in case the failure continues, with an “additional penalty which may extend up to five thousand rupees for e very day during which such failure continues after the first such failure.

18. *Penalty for certain acts – whoever-*

(a) Obstructs any person acting under the orders or directions of the appropriate authority from exercising his powers and performing his functions under this Act; or

(b) Fails to furnish to any officer or other employee of the appropriate authority any information required by him for the purpose of this Act; or

(c) In giving any information, which he is required to given under this Act knowingly or willfully makes a statement, which is false in any material particular.

Shall be liable to pay a penalty, which may extend up to five thousand rupees. ”

11. Section 19 provides for residual penalty for contravention of certain provisions of Act and Section 20 specifically enacts for contravention by Companies. But for Section 16 it can be argued that the entire range of sanctions including penalties have been specifically provided by various provisions such as Section 11, 18, 19 & 20. The question, therefore, is - whether the general power to issue directions comprehends the power to require bank guarantees to be furnished.

12. Now, there is no doubt that the Act enables the authorities set up under it to supervise and regulate plants and mandate best practices for avoidance of water pollution. The scheme of the Act and its preambular declaration clearly point to the respondent authorities’

power extending towards setting up of CETP Societies, installation of plants and apportionment of costs and their recovery. Section 8 (2) entitles the appropriate authority to direct a person who in its opinion is discharging effluents to give such information in such form as may be specified in the directions for the purpose of enabling the appropriate authority to perform the functions conferred on it by or under the Act. The power to issue directions, includes the power to close, or prohibit or regulate any industry, establishment, operation or process; or to stop or regulate the supply of electricity, water or any other service.

13. In this context, it will be also useful to consider Rule 10 of Delhi Common Effluent Treatments Plants Rules, 2001, which states as follows: -

“10. Directions

(i) Any direction issued by the appropriate authority under the Act/rules shall be in writing.

(ii) The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person/occupier, officer or the authority to whom such direction is given.

(iii) When the direction/order is for the closure/sealing/auction of an industry, process or operation or stoppage or regulation of electricity or water or any other service affecting the carrying on any industry, operation or process and issued to an officer or an authority, a copy of the direction shall also be endorsed to the occupier of the premises/industry, operation or process, as the case may be and objections, if any, filed by the occupier with an

officer designated in this behalf shall be dealt with in accordance with the provisions of the Act.

Provided that no opportunity of being heard shall be given to the occupier if he has already been heard earlier and the directions for the stoppage or regulation of electricity or water or closure/sealing/auction of an industry was the resultant decision of the Government, appropriate authority or the appellate authority, as the case may be, after such earlier hearing.”

14. It is an established rule of statutory interpretation that every provision, which confers a power should be construed in its own terms, enabling the authority the full range of options, which may naturally fall within it. (*Asstt. Collector of Central Excise, Calcutta –vs- National Tobacco Co of India* AIR 1972 SC 2563; *Jamaluddin Ahmad –vs- Abusaleh Najmuddin* 2003 (4) SCC 257); likewise the express grant of a certain kind of power implies, in cases, exclusion of other powers. This rule also iterates that everything necessary to carry out the purposes of the grant can be done by the authority entrusted with the power (Ref. *State of U.P. –vs- Poosu*, AIR 1976 SC 1750; *State of Karnataka –vs- Vishwabharathi Housing Co-operative Society* AIR 2003 SC 1043).

15. The petitioners’ contention, though attractive that the power to issue directions cannot comprehend the issuance of directions to furnish guarantees, cannot be accepted. The power to issue directions, under Section 16 extends to “regulate” the industry or unit. The expression “regulate” in the context, wherever used, has to be given the widest meaning. In a remedial or regulatory enactment, as the Act

undeniably is, this expression acts as a crucial power conferral on the authorities – the extent of such power is even closure of the industry or unit. Such being the case, the court cannot limit the options available to statutory authorities to meet emerging challenges, towards ensuring compliance with the provisions. In given cases, the Commissioner may not deem it appropriate to take the extreme step of closing down the unit; yet, to ensure that good practices are put in place, he may issue specific directions, and as a measure to ensure compliance, require furnishing of guarantee, valid for a period, or as to enable him to invoke it, to remedy the harm, which is sought to be addressed by the Act or rules framed under it. In arriving at this conclusion, the overriding nature of Section 16, which begins with a *non obstante* clause, cannot be lost sight of.

16. The above analysis however, is not dispositive of these petitions. The authorities, in these cases, though clothed with the power to direct the petitioners to furnish guarantees, have however, not shown how and why such action was necessary. The show cause notice issued in each case, is stereotypical; it does not reflect what are, according to the authorities, infraction of standards or directions, which had to be remedied by the units. Crucially, the show cause notices, preceding the impugned orders did not even mention about the possibility of issuance of orders requiring bank guarantees to be furnished. Again,

similarly in the case of the impugned order, the list of matters to be done by unit(s) is general, not specific to the individual activity. Nor does it indicate application of mind to what exists on the site, and what is the standard required to be, but not complied. Although a meticulous and exacting standard cannot and should not be insisted by courts, while considering the validity of such orders, yet, the authority should point to some thinking vis-à-vis what exists at the unit, which requires remedying that in turn has to be conditioned by furnishing of a bank guarantee.

17. In view of the above discussion, the petitions have to be partly allowed. The challenge, on the ground of lack of power of the respondents, must fail; however, the impugned orders cannot, for reasons mentioned in the preceding paragraph, be sustained. They are accordingly quashed. No costs.

**S. RAVINDRA BHAT
(JUDGE)**

JANUARY 16, 2009
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