

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

%

Date of Decision: 11.11.2013

+ WP(C) No.6904 of 2013 & CM Nos.14951 & 14952 of 2013

APEX CHAMBER OF COMMERCE AND INDUSTRY

..... Petitioner

Through: Mr. Maninder Singh, Sr. Adv. with
Mr. PS Bindra, Advs.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS

..... Respondent

Through: Ms. Zubeda Begum, Standing
Counsel for GNCTD

Mr. Sunil Kumar, Adv. for R-2 –
UOI

Mr. Sanjeev Ralli with Mr. Manu
Prashar, Advs. for R-4 – DPCC

Mr. Arun Birbal, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

CM 15222/2013 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM 15221/2013 (by petitioner for impleadment)

This is an application by certain industries engaged in the industrial activities of stainless steel pickling seeking impleadment as co-petitioners.

For the reasons stated therein, the application is allowed and the applicants are impleaded as co-petitioners in this writ petition. The amended petition is taken on record.

The application stands disposed of.

W.P.(C) 6904/2013

Master Plan for Delhi – 2021 (MPD – 2021) came to be notified vide notification dated 7.2.2007. The said plan contains a list of negative / prohibited industries which are prohibited from being run in National Capital Territory of Delhi. Annexure-III contains the list of those prohibited / negative 1 industries and Item No.88 pertains to stainless steel pickling. Clause 7.2 under the heading “Classification of Industries” provides that the existing industrial units under prohibited category need to relocate themselves outside Delhi, within a period of three (3) years. As a result of the aforesaid requirement of Master Plan, stainless steel pickling industries could continue in Delhi only for a period of three (3) years commencing 7.2.2007 and within that period such industries were required to relocate themselves outside Delhi.

2. W.P(C) No.3404/2012 was filed by Apex Chamber of Commerce and Industries versus NCT of Delhi and others, *inter alia*, challenging the aforesaid entry no.88 in Annexure-III containing list of prohibited / negative industries. Vide order dated 23.8.2012, a Division Bench of this Court struck down/ quashed the aforesaid entry and accordingly also quashed the notice dated 22.3.2012 issued by Delhi Pollution Control Committee (DPCC) directing closure of such units only on the ground that their activity was bad/ prohibited under the Master Plan.

3. Vide order dated 21.8.2013, the National Green Tribunal (NGT), observing that such industries are highly polluting industries which can have a serious impact on water, water-bodies, drains and where industrial effluent is

discharged from such units and further noticing that such industries cannot be established or operated without consent of DPCC, restrained such units from carrying on their activities/ manufacturing anywhere in Delhi without obtaining of consent from DPCC and other appropriate permissions which were required for such operations in accordance with law.

4. Vide notification dated 23.9.2013, the Master Plan – 2021 was further amended so as to re-introduce the stainless steel pickling in the list of negative/ prohibited industries. Some of the existing units submitted applications to DPCC seeking its consent under the Water and Air Act for running such industries. Those applications were, however, returned to the applicants solely on the ground that their industries have been placed in the list of prohibited / negative industries in the Master Plan of Delhi – 2021. Being aggrieved, the petitioners are before this Court seeking the following reliefs:

- (i) certiorari for quashing letter bearing number DPCC/CMC-II/SS Pickling/NGT/2013/43162 to 67 and Letter bearing no. DPCC/CMC-II/SS Pickling/NGT/2013/43168 to 74 both dated 10.10.2013 issued by respondent no.4/ DPCC to Deputy Commissioner (North – West), Kanjhawala and Deputy Commissioner (North), respectively requiring them to take immediate action for effective closure of units engaged in stainless steel pickling.

5. The main question which arises for consideration in this case as to whether the period of three (3) years available to such industries to relocate outside Delhi commenced on 7.2.2007 when Master Plan for Delhi – 2021 was notified or on 23.9.2013 when the above referred amendment in the said plan came to be notified.

6. In my view, considering that Entry no.88 of Schedule – III of MPD-2021 came to be struck down/ quashed by a Division Bench of this Court, the period of three (3) years available for relocation of such industries outside Delhi commenced only from 23.9.2013 when the said plan came to be amended. The result of this Court quashing the Entry No.88 in Third Schedule was as if the said entry never existed in Master Plan for Delhi – 2021 when it came to be notified. Therefore, the prohibition of running such industries in Delhi shall be deemed to have come into force only on 23.9.2013.

The learned counsel for DPCC submitted that such industries have already availed the benefit of continuing in Delhi for more than three (3) years. Even if that be so, that makes no difference, considering the order of this Court striking down Entry no.88 in the Third Schedule. Once the said entry was quashed, these industries became entitled to continue to operate in Delhi subject of course to the provisions of other laws for the time being in force including the Environment Protection Act, Water and Air Pollution Act and the rules framed thereunder. If we look the matter from another angle, after the order passed by this Court striking down the Entry no.88 of Third Schedule nothing prevented the new industries engaged in the business of stainless steel pickling coming into operation after obtaining other statutory approvals. Certainly it cannot be said that such industries have enjoyed holiday period of three (3) years contemplated under the Master Plan. Though the units which are the petitioners before this Court may be those units which existed even on 7.2.2007 when MPD-2021 came into force, the Court while interpreting the provisions of Master Plan, has also to see the impact of its interpretation on units which yet to be engaged in a business of this nature.

7. Since the amendment in the Master Plan of Delhi has come into force only on 23.9.2013, in my view, DPCC was not justified in returning the applications seeking its consent solely on the ground that these activities are

included in the list of prohibited industries, contained in Scheduled-III. The DPCC, in my view, should have considered such applications for grant of its consent on their merit and then taken an appropriate decision. I agree with the learned counsel for the petitioners that if other laws for the time being in force, permit DPCC to altogether reject such applications, despite such industries have permission under Master Plan to continue in Delhi for a period of three (3) years commencing from 23.9.2013, nothing prevents DPCC from refusing to give its consent to the applicants. But, it must necessarily deal with such applications on merit, in accordance with various legal provisions including the provisions of Environment Protection Act, Water and Air Pollution Act and the rules framed under such Acts.

8. The DPCC is directed to decide the pending applications seeking its consent, including the applications which were earlier submitted to it and returned, as expeditiously as possible and in any case within the statutory time prescribed in this regard. It is not open to the petitioners to resume stainless steel pickling without obtaining consent from DPCC in accordance with law.

9. The letter dated 10.10.2013 issued by DPCC is hereby quashed, but making it again clear that quashing of the said letter shall not permit the petitioners or other industries engaged in such business to bypass the order passed by the National Green Tribunal. In other words, so long as the order of the National Green Tribunal remains in force, they cannot resume their operations.

The writ petition stands disposed of in terms of this order. There shall be no orders as to costs. All pending applications also stand disposed of.

NOVEMBER 11, 2013/*rd*

V.K. JAIN, J.