

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.211/2023 with
MC (WPC) No.150/2023

Date of order: 13.07.2023

JMK Coke Industry Pvt Ltd Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice H. S. Thangkhiew, Judge
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Ms. B. Dixit, Adv

For the Respondents : Mr. A. Kumar, Advocate General with
Mr. N.D. Chullai, AAG
Ms. R. Colney, GA

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

This is a petition which has been referred to the Full Bench by a Single Bench upon noticing that matters pertaining to illegal operation of coke plants in the State and illegal mining and transportation of illegally-mined coal in the State were pending before this Bench.

2. The challenge here is to an order dated July 7, 2023 passed by the Deputy Commissioner, East Jaintia Hills district. By such order, the Deputy Commissioner has required the demolition of unauthorised illegal chimneys, unauthorised coke oven plants constructed without the requisite consent to establish, beginning July 10, 2023.

3. The petitioner claims that the relevant order is without previous notice to the petitioner and, as such, in complete breach of the principles of natural justice and, accordingly, not tenable. The petitioner claims that pursuant to a single-window clearance issued by the Director of Commerce and Industries of the State by an order dated April 5, 2021, the petitioner undertook the process to establish the manufacturing facility. However, the petitioner maintains that no manufacturing activity has been undertaken at the relevant plant. The petitioner claims that this is an admitted position and, according to the petitioner, even the Deputy Commissioner of the relevant district has not alleged that the petitioner has commenced operations or has undertaken any manufacturing activity at the plant in question.

4. The single-window clearance obtained by the petitioner on April 5, 2021 came with several caveats. In the second paragraph of the said letter, it was clearly indicated that the approval as granted by the said letter was “subject to ... obtaining of Consent to Establish/Consent to Operate from the Meghalaya State Pollution Control Board ...” and several other conditions. It is evident from the Water (Prevention and Control of Pollution) Act, 1974 that the consent to establish a manufacturing facility is quite distinct from the consent to operate the same. There are two stages and permission is necessary prior to

establishing a manufacturing facility. Upon establishing the facility by adhering to the conditions indicated in the consent to establish, an application may be made for consent to operate which is a separate permission that may come with a separate set of conditions. Since the scheme of the said Act permits conditions to be imposed, depending on the geographic, environmental and other relevant considerations, a manufacturing facility cannot be willy-nilly set up without the previous consent to establish being obtained. Any other interpretation would do violence with the provision and purpose thereof. It is well-nigh impossible for a person to anticipate the conditions that would be indicated at a subsequent stage and build the manufacturing facility without obtaining the consent to establish by assuming that such consent would be unconditional.

5. The conduct of the petitioner is akin to constructing a building without obtaining sanction or approval of the plan therefor. The Court does not have the authority to transgress the provisions of a valid statute and condone illegality, for that would be opposed to public policy and provide for a recipe for anarchy and disorder.

6. Further, the approval dated April 5, 2021, in its penultimate paragraph, provided as follows:

“You are to note that ‘effective steps for implementation of the project’ should not be initiated without obtaining prior ‘Consent

to Establish' from the Meghalaya State Pollution Control Board and 'commencement of production' should not be done without obtaining prior 'Consent to Operate' from the above said Board."

Thus, the relevant order of approval expressly prohibited the petitioner herein from taking any effective steps for implementation of the project without obtaining the prior consent to establish from the State Pollution Control Board. In terms of such order read with Section 25(1) of the said Act, not a brick could have been laid nor any stone cast to set up any manufacturing facility without the State Pollution Control Board according the consent to the petitioner to establish the manufacturing unit.

7. The petitioner suggests that since the relevant approval granted by the letter of April 5, 2021 indicated categorically in its last paragraph that the approval thereunder would be valid for a period of two years and since the petitioner had applied to the appropriate authorities for consent to establish the plant, the petitioner was left with no alternative but to commence and complete the construction of the proposed unit in anticipation that the consent to establish and, subsequently, the consent to operate would be issued in due course upon the petitioner complying with all formalities in such regard. The petitioner claims that the application for consent to establish was filed as early as in July of 2021.

8. Pursuant to certain orders passed in proceedings pertaining to the illegal mining of coal in the State and the illegal operation of coke oven plants by this Court, the petitioner claims to have questioned the propriety of an order by which the demolition of certain coke oven plants may have been directed. In such regard, the petitioner relies on an order of the Supreme Court passed on June 27, 2022. Such order required the petitioners before the Supreme Court to apply before this Court for modification of the previous interim orders and for this Court to hear such petitioners and pass appropriate orders thereupon. During the interregnum, the direction apparently issued by this Court for dismantling the coke plants was directed to remain stayed.

9. Pursuant to such order of the Supreme Court, the applications of several persons were taken up and dealt with by this Bench by an order of August 25, 2022. It was noticed in such order that the single-member committee appointed by this Court in the matter relating to illegal mining of coal in the State had recommended in its third interim report as follows at paragraph 3.19 thereof:

“3.19 In any case, in the absence of the CTE and CTO none of the aforesaid 26 Coke Oven Plants can start its operation, which, if done, would be in violation of the provisions of the environmental laws.”

10. The relevant applications of several interveners, who had obtained leave from the Supreme Court, was disposed of without

granting any relief to them since no order had been passed in the relevant proceedings that prejudicially affected such persons. Indeed, no interim order was passed in the relevant proceedings affecting the rights of any person who may have set up a coke plant upon obtaining the consent to establish the same; nor was any order passed in the said proceedings that could have affected any person who had started operating a coke plant upon obtaining consent to operate the same from the appropriate authorities.

11. The petitioner's application for consent to establish was rejected by an order dated January 6, 2022. There does not appear to be any challenge to such order, whether directly or otherwise.

12. However, the petitioner maintains that in view of Section 25(7) of the said Act of 1974, the consent to the petitioner's application to establish the coke plant should be deemed to have been given. The relevant provision, indeed, recognises that in case consent sought under Section 25(1) of the said Act is not refused earlier, it shall be deemed to have been given unconditionally on the expiry of four months from the making of an application in such behalf, complete in all respects.

13. The admitted position is that the petitioner herein neither attempted to operate the relevant unit nor challenged the order dated January 6, 2022 before any appropriate forum. If it was the petitioner's

case that by virtue of sub-section (7) of Section 25 of the said Act, the consent was deemed to have been given, the petitioner ought to have commenced operations at the coke plant sometime towards the end of the year 2021; or, at the very least, applied for consent to operate upon having obtained, by a legal fiction, the consent to establish the unit. The petitioner's avowed position, however, is that the relevant unit has not commenced its manufacturing operations.

14. Upon the order dated January 6, 2022 coming into effect, the petitioner had ample opportunity to challenge the same or have it set aside whether on the ground of Section 25(7) of the Act or otherwise. No attempt in such regard has been made by the petitioner. Accordingly, as on date, there is no consent to establish the manufacturing unit for the production of coke that the petitioner is in possession of.

15. The petitioner points out that upon the State Pollution Control Board changing the rules of the game pertaining to the parameters necessary to be adhered to for obtaining consent to establish a coke plant, a similarly-placed person challenged the same in WP (C) No.259 of 2022. The petitioner also claims that in course of such petition, there was an express challenge to the order dated January 6, 2022 and a

prayer for cancellation or setting aside thereof. No copy of the writ petition is, however, produced.

16. The relevant writ petition was disposed of by a judgment and order of March 7, 2023. Paragraph 13 of the order is of relevance:

“13. In conclusion therefore, looking into the totality of the circumstances, especially the public interest and policy involved, while setting aside the impugned notification dated 23.12.2020, the statement that the respondent No.2 is in the process of review of the same, is taken into consideration by this Court, and the respondent No.2 is accorded 8(eight) weeks’ time from the date of this order to complete the same. it is further provided that during this period, there shall be a status quo on all operations of the petitioner at its project site, who nonetheless also, is not in possession of any valid permissions to re-start the project, as per the materials on record.”

17. No order was issued in respect of the refusal of consent of January 6, 2022. Indeed, the writ court also noticed that the petitioner in the said proceedings was not in possession of any valid permission to restart the project.

18. It is elementary that when a prayer is made to a court by way of a petition and such prayer is declined, whether expressly or otherwise, it is open to the relevant petitioner to challenge the order. There is no submission that the order dated March 7, 2023 has been challenged. Accordingly, since the petitioner maintains that a prayer for setting aside the refusal to consent of January 6, 2022 was incorporated in such

petition and such prayer was not granted, the petitioner can no longer challenge the relevant refusal to consent.

19. More importantly, it is evident that the relevant writ petition on which the order dated March 7, 2023 was passed, was not instituted by this petitioner. It is difficult to imagine how a refusal of consent sought by a specific person could have been vicariously challenged by another. It is apparent that this petitioner did not challenge the refusal of consent of January 6, 2022 and, as such, has accepted the position, that by virtue of Section 25(1) of the said Act of 1974 read with the preliminary permission granted on April 5, 2021, it could not have set up the manufacturing unit.

20. Thus, as at present, it is the undisputed position that an application that was made by the petitioner in July, 2021 for consent to establish a coke plant, has been expressly rejected by a speaking order of January 6, 2022 and there is no challenge to such refusal of consent or the alleged vicarious challenge thereto has not been upheld and has failed. In such circumstances, there was no impediment on the part of the district authorities to require demolition of the coke plant set up by the petitioner without obtaining any consent to establish the same.

21. Section 25(1) of the said Act of 1974 provides that subject to the provisions of such section, no person shall, without the previous consent

of the State Board, inter alia, establish or take any steps to establish any industry, operation or process which is likely to discharge sewage or trade effluent. In the absence of any consent to establish, the law places an embargo on any individual or any entity for constructing any unit or project. The necessary consequence of acting in derogation of the express prohibition is that anything done contrary to such provision would have to be demolished or dismantled.

22. A completely fallacious argument is made on behalf of the petitioner that since the relevant provision does not authorise the authorities to dismantle or demolish a project or unit that has been set up, the order impugned passed for demolition of the petitioner's unit, amongst others, is without jurisdiction. As indicated, it is repeated that when a thing is prohibited by law to be done, the consequence of doing such thing is that it has to be undone by the appropriate authorities. As a consequence, there does not appear to have been any impediment on the part of the Deputy Commissioner, East Jaintia Hills to pass the order of demolition nor is there any ground to interfere with such due process of law. Since the petitioner recklessly proceeded to engage men and machinery and incurred expenditure to set up the manufacturing unit despite the express prohibition in Section 25(1) of the said Act, the petitioner cannot now be heard to complain that the investment made by

the petitioner would go down the drain. The petitioner ought to have been conscious of the consequences before it embarked on the foolhardy exercise of setting up the manufacturing unit in derogation of the mandate of the statute.

23. It must be recorded at this stage that the illegal mining of coal in the State was stopped by orders passed by the National Green Tribunal as early as in 2014. Proceedings were instituted against the complete prohibition before the Supreme Court and, finally, a quietus was given to the matter in or about the year 2019 with the Supreme Court upholding the ban imposed by the NGT and requiring the illegally-mined coal to be disposed of within reasonable time.

24. It was in or about March, 2022 that it was noticed by this Court that despite the Supreme Court order of 2019 upholding the prohibition on unscientific mining of coal in this State and requiring the previously illegally-mined coal to be disposed of within a certain time-frame, fresh mounds of recently mined coal had blossomed all over the State, particularly in the district of East Jaintia Hills with Khliehriat and Rymbai as the major hub therefor. Suo motu proceedings were instituted by this Court since it was noticed that orders passed by the Supreme Court had not been carried out by the State machinery. Over the last 15 months, repeated orders have been passed in the suo motu

proceedings pertaining to illegal coal-mining and the ancillary illegal business of its transportation and use.

25. There have been several deaths in the State upon rat-hole mining having been resorted to. This Court has passed orders to arrest the transportation of the illegally-mined coal. Several other matters have been instituted in public interest before this Bench pertaining to the illegally-mined coal in the State being presented with fabricated documents for the purpose of export thereof through land Customs stations in Gasuapara and elsewhere with the connivance with local officials.

26. In some other independent proceedings which are pending, the names of the kingpins involved in the industry of illegal mining and the exploitation of the small-time miners have come out. Orders have been issued requiring the State to dismantle the entire machinery of illegal mining of coal, its transportation and the flourishing coke oven plants that use the illegally-mined coal for its operations. No order has been passed by this Court for dismantling any coke plant in the State which has been constructed upon obtaining due consent to establish the same; nor has any order has been passed to stop the operations at any coke plant that has commenced its functioning upon obtaining due consent to operate from the appropriate authorities. Since the petitioner proceeded

to construct its manufacturing unit without obtaining any previous consent to establish the same and in violation of both Section 25(1) of the Act of 1974 and the preliminary permission that it obtained on April 5, 2021, there is no equity in favour of the petitioner for its illegally constructed manufacturing unit to be left standing.

27. Indeed, if the petitioner's unreasonable request is acceded to, it would be opposed to public interest and would amount to condoning an illegality that the Court scarcely has the authority to do in the face of the clear words of prohibition in Section 25(1) of the said Act.

28. There is no merit in the petition and the same is dismissed with costs assessed at Rs.1 lakh, payable to the State Pollution Control Board within six weeks from date, failing which the Board will be entitled to recover the same as in case of arrears of land revenue with interest running thereon at 8 per cent per annum simple beginning six week herefrom.

29. MC (WPC) No.150 of 2023 is disposed of.

(W. Diengdoh)
Judge

(H. S. Thangkhiew)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
13.07.2023
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