

Court No. - 21

Case :- WRIT - C No. - 22830 of 2023

Petitioner :- M/S S.S. Brick Field

Respondent :- State Of U.P And 3 Others

Counsel for Petitioner :- Ajendra Kumar

Counsel for Respondent :- C.S.C.,Sandeep Kumar Srivastava

Hon'ble Manoj Kumar Gupta,Acting Chief Justice

Hon'ble Donadi Ramesh,J.

1. The instant petition is directed against the order dated 23.12.2022 passed by respondent no.4, U.P. Pollution Control Board, Lucknow, Regional Officer, Firozabad rejecting application of the petitioner for grant of consolidated consent and authorization under Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1972 as amended, under Section 21/22 of Air (Prevention and Control of Pollution) Act, 1981 as amended and authorization under the provisions of the Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016. The order records that the consent granted to old firm M/s Neelam Ent Udyog was withdrawn by letter dated 16.07.2021. The case of the petitioner is that old firm was changed to that of the petitioner firm. It applied for fresh permission. However, for reasons recorded in the order, the same was declined.

2. Learned counsel for the respondents submitted that an appeal lies against the said order to the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981.

3. Learned counsel for the petitioner tried to contend that since second proviso to sub-section (4) of Section 21 contemplates for a reasonable opportunity of hearing, which has not been complied with, therefore, the availability of alternative remedy would not be a bar.

4. Sub-section (4) of Section 21 is extracted below:-

"(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not

fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned."

5. Under the second proviso, opportunity of hearing is required to be given in two contingencies: (i) when subsisting consent is cancelled; (ii) when further consent is refused under the first proviso.

6. In the instant case, as noted above, the application was for grant of fresh consent in the name of the petitioner firm. The earlier order by which consent in name of old firm was withdrawn, dated 6.07.2021, is not under challenge. In such circumstances, the second proviso would not apply.

7. Counsel for the petitioner, at this stage, submits that the petitioner would file appeal and the same may be directed to be decided within a specified time frame to which learned counsel appearing on behalf of U.P. Pollution Control Board and learned standing counsel appearing on behalf of the State respondents have no objection.

8. Accordingly, the petition is disposed of by providing that in case appeal is filed within two weeks from today, the same shall be decided by the Appellate Authority on merit in accordance with law within next six weeks.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, A.C.J.)

Order Date :- 11.12.2023

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