

Reserved

Case :- APPLICATION U/S 482 No. - 1055 of 2013

Applicant :- Pradeep Kumar Gupta And Ors.

Opposite Party :- The State Of U.P And Anr.

Counsel for Applicant :- Nirankar Singh, Aprajita Bansal, Sharad Nandan Ojha, Sujeet Kumar

Counsel for Opposite Party :- Govt. Advocate, Ashok K. Verma, Sudhir Pandey

Hon'ble Rajeev Singh, J.

1. Heard Ms. Aparajita Bansal and Shri S.N. Ojha, learned counsel for the applicants and Shri Ashok Kumar Verma, learned counsel appearing for U.P. Pollution Control Board.

2. This application has been filed for quashing the summoning order dated 07.04.2012 as well as entire proceedings of Case No. 156 of 2012, (U.P. Pollution Control Board Vs. M/s Hindustan Institute of Technology and Management & Ors.).

3. Learned counsel for the applicants submitted that the Hindustan Institute of Technology and Management at Agra is an educational institution imparting its technical education, which is duly affiliated to U.P. Technical University. The Hindustan Institute of Technology and Management, Agra (hereinafter referred to as 'College') was established in accordance with the norms of All India Council for Technical Education as well as U.P. Technical University. The College also provides residential facilities to around 600 students apart from the residential facilities provided to around 150 teaching as well as other staff of the College.

It has further been submitted that applicant no. 1 is the Chairman of the Board of Governor/Governing Council, applicant no. 2 is the Vice Chairman, applicant nos. 3, 4 & 5 are the Members of the Board, applicant no. 6 is an industrialist, applicant no. 7 is the technologist, applicant no. 8 is Dean of the College and applicant no. 9 is a Civil Engineer employed by the College.

4. Learned counsel for the applicants submitted that initially, the domestic waste water was being discharged in the campus of the College was being used for gardening and watering purposes internally, hence, no waste water was being allowed to flow outside the campus and the said discharge was being used for productive purposes as well as promoted organic cultivation. The College was also constructing a sewage treatment plant for the treatment

of home generated waste water for its proper discharge outside its campus, if required. It has been submitted that a team of U.P. Pollution Control Board (for short the 'Board') visited the College on 27.12.2011 and after inspecting the system used by the College for treatment of its discharge of domestic effluents and waste water, they collected some samples. It has also been submitted that the inspection team was also informed about the sewage treatment plant, which was almost constructed. However, all of sudden, summons related to the case in question was received for alleged violation of Sections 24, 25, 26 of Water (Prevention & Control of Pollution) Act, 1974 (hereinafter referred to as the 'Act'). It has vehemently been submitted that prior to receiving the aforesaid summons, the applicants have never received any notice under Section 25 of the Act from the Board in relation to violation of the Act.

5. It has next been submitted that respondent no. 2 filed the complaint against the applicants for violation of Sections 24, 25, 26 of the Act. However, Section 47 of the Act provides that where an offence under this Act has been committed by a Company, every person, who at the time of the offence was committed, was in-charge or was responsible to the Company for the conduct of business of the Company, as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be prosecuted.

Learned counsel for the applicants vehemently submitted that in the present case, there is no such averment in the complaint that as to who is the responsible person for the day to day affairs of the College.

6. Lastly, placing reliance on the decision of the Hon'ble Apex Court in the case of **Pepsico India Holdings Private Limited Vs. Food Inspector & Anr., (2011) 1 SCC 176**, learned counsel for the applicants submitted that the complainant has to show that the Directors concerned were either in-charge or are responsible for day to day management of the College. It has, thus, been submitted that the impugned proceedings of Case No. 156 of 2012 pending before Special Magistrate, Pollution, Lucknow is liable to be set aside.

7. On the other hand, while opposing the prayer of the applicants, Shri Ashok Kumar Verma, learned counsel appearing for the Board submitted that as per the provisions of Section 25 of the Act, no person, without the previous consent of the Board, shall establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage. It has further been submitted that in the

present case, the College was established without obtaining any previous consent from the Board and had started bringing into use its outlet. It has also been submitted that admittedly, the College was inspected on 27.12.2011 by the authorised Officers of the Board in the presence of applicant no. 9 and in the said inspection, it was found that the College was functional and the polluted sewage was being discharged. It has also been submitted that in the present application itself, the applicants have admitted that the residential facilities were being provided to around 600 students, those are studying in the College along with around 150 teaching and other staff of the College, however, the mandatory consent was not obtained from the Board. It has next been submitted that the sample of sewage discharge was also collected, analysis of which, shows that the sewage discharge of the College was beyond the standards laid down by the Board, thereby committed offence under Section 43 of the Act.

8. Learned counsel for the Board submitted that the notice as well as sample analysis report dated 23.01.2012 and the standard laid down by the Board is the part of the complaint. It has vehemently been submitted that these facts have not been denied by the applicants. Learned counsel for the respondent-Board submitted that as per the provisions of Section 47 of the Act, not only the Company, but every person, who at the time of offence, was in-charge and was responsible to the Company for the conduct of its business, is liable for the commission of the said offence.

9. Lastly, while submitting that all these facts cannot be examined at this stage, reliance has been placed by the learned counsel for the respondent-Board on the decision of the Hon'ble Apex Court in the case of **U.P. Pollution Control Board Vs. Dr. Bhupendra Kumar Modi & Anr., (2009) 2 SCC 147** and submitted that all these defence can be raised before the court below. It has, thus, been submitted that the application is liable to be dismissed.

10. Considering the arguments advanced by the learned counsel for the applicants, learned counsel appearing for the Board and going through the contents of the application, complaint, summoning order as well as other relevant documents, it is undisputed fact that the College was established and functional without obtaining the consent from the Board as provided in Section 25 of the Act. Further, admittedly, individual responsibility of every applicant cannot be examined in the present proceedings.

11. In view of above, the application is misconceived and, accordingly, stands

dismissed.

12. However, it is open to the applicants to appear before the court below and raise all their defence at the appropriate stage.

Dated : November 3, 2023
VKS