

GAHC010257202019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7753/2019

OIL AND NATURAL GAS CORPN. LTD.
A COMPANY REGD. UNDER THE PROVISION OF COMPANIES ACT, 1956,
HAVING ITS REGD. OFFICE AT PLOT NO. 5A-5B NELSON MANDELA ROAD,
VASANT KUNJ, NEW DELHI, 110070 HAVING ALSO A REGIONAL OFFICE
FOR THE EASTERN REGION AT NAZIRA, P.O. NAZIRA, DIST- SIVASAGAR
(ASSAM) AND DULY REP. BY HEAD DRILLING SERVICES, ONGC,
SIVASAGAR

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM,
ENVIRONMENT AND FORESTS DEPTT., DISPUR, GHY-06

2:THE POLLUTION CONTROL BOARD
ASSAM
REP. BY ITS MEMBER SECY.
BAMUNIMAIDAM
KAMRUP (M)
GHY-21
ASSA

Advocates for the petitioner : Mr. I Choudhury, Senior Advocate
Mr. A Choudhury

Advocates for the respondents : Mr. S Baruah
Standing Counsel, State Pollution

Control Board.

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Date : 05-09-2024

JUDGMENT & ORDER(ORAL)

Heard Mr. I Choudhury, the learned senior counsel assisted by Mr. A Choudhury, the learned counsel appearing on behalf of the petitioner. Also heard Mr. S Baruah, the learned Government Advocate, Assam appearing on behalf of the respondent No.2. None appears on behalf of the respondent No.1 on call.

2. The petitioner herein which is a Central Public Sector Undertaking and engaged in the business of exploration, commerce, development and production of oil and natural gas, have approached this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution challenging the show cause notice dated 28.06.2019; the communications dated 05.09.2019, 26.09.2019 and 23.10.2019 and in addition to that also have challenged the analysis report dated 05.08.2019.

3. The facts leading to the filing of the instant writ petition are that the Supreme Court in the case of *Paryavaran, Suraksha Samiti and Another Vs. Union of India & Ors.* reported in (2017) 5SCC 326, which was passed on 22.02.2017 had issued certain directions in respect to effluent treatment plant.

The issue which came up for consideration before the Supreme Court in the said case was on the basis of a writ petition being filed seeking a writ in the nature of mandamus for appropriate directions upon the Union Government, all State Governments as well as the Union Territories to ensure that no industry which requires consent to operate from the Pollution Control Board (for short, the PCB) is permitted to function, unless it has a functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent before it is discharged. From a perusal of the said judgment dated 22.02.2017, it transpires that there was a consensus arrived at that having effluent treatment plants were highly beneficial in carrying forward the process of removing pollutants from the discharged effluents in a systematic and coordinated manner. In that regard, the Supreme Court observed at paragraph 4 that industries be permitted to run subject to setting up of primary effluent treatment plant, which is functional. Accordingly directions were issued to the State PCB to issue notices to all industrial units which require consent to operate by way of a common advertisement requiring them to make their primary effluent treatment plant fully operational within 3(three) months from the date of the said order. The State PCBs' were directed to carry out inspection(s) to verify whether or not each industrial unit requiring consent to operate had functional primary effluent treatment plant after the expiry of the notice period of three months and during inspection, if it is found that such industry does not have the primary effluent treatment plant, such industry be refrained from any further industrial activity. Paragraph 4 of the said order dated 22.02.2017 is reproduced herein below:

“4. The question that arises for our consideration is, whether the same is maintained in good order, after the industry itself has become functional. The industry requiring “consent to operate”, can be permitted to run, only if

its primary effluent treatment plant, is functional. We, therefore, consider it just and appropriate, to direct the State Pollution Control Boards concerned, to issue notices to all industrial units, which require "consent to operate", by way of a common advertisement, requiring them to make their primary effluent treatment plants fully operational, within three months from today. On the expiry of the notice period of three months, the State Pollution Control Board(s) concerned are mandated to carry out inspections, to verify, whether or not, each industrial unit requiring "consent to operate", has a functional primary effluent treatment plant. Such of the industrial units, which have not been able to make their primary effluent treatment plant fully operational, within the notice period, shall be restrained from any further industrial activity. This direction may be implemented by requiring the electricity supply and distribution agency concerned, to disconnect the electricity connection of the defaulting industry. We, therefore, hereby further direct that in case the State Pollution Control Boards concerned make a recommendation to the electrical supply and distribution agency/company concerned, to disconnect electricity supply to an industry, for the reason that its primary effluent treatment plant is not functional, it shall honour such recommendation, and shall disconnect the electricity supply to such defaulting industrial concern, forthwith."

4. It is also seen that in the aforesaid order, the Supreme Court had also passed various directions as regards the rigid implementation mechanism to be followed, so that the directions so passed in the said order as regards the necessity of having a primary effluent treatment plant is maintained in letter and spirit of the said order. In addition to that, the jurisdictional National Green Tribunal (for short, the NGT) were also directed to supervise complaints of non-implementation and the State PCBs were also directed to initiate such civil or criminal action as may be permissible in law against all or any of the defaulters.

5. In pursuance to the aforesaid order dated 22.02.2017, it is seen from the records that the respondent No.2 had issued a paper publication in the Assam

Tribune on 12.04.2017, thereby asking all the industrial units discharging effluents to have a primary effluent treatment plant fully operational.

6. It is also very pertinent to take note of that the issue which was the subject matter of the order passed by the Supreme Court dated 22.02.2017 was taken up by the learned NGT, Principal Bench, New Delhi, as per the direction(s) so passed by the Supreme Court. The said proceedings were registered before the learned NGT, Principal Bench, as Original Application No.593/2017. Upon its registration, on 25.05.2017, notices were issued to the Central PCB as well as the State PCB and the Ministry of Environment and Forest and Climate change to file status report as regards deficiencies. It is seen from the order dated 19.02.2019 passed by the learned NGT, Principal Bench, that though many of the States, along with the State PCB's have submitted status reports, however, the State of Assam, and more particularly, the respondent No.2 did not submit any reports then which is apparently reflected in paragraph 14 of the order dated 19.02.2019 of the learned NGT, Principal Bench.

7. Another important aspect in the order dated in 19.02.2019 is that the learned NGT, Principal Bench, formulated a methodology for assessing the environmental compensation as well as an action plan to utilize the funding. The relevant portion of the order wherein the methodology adopted to assess the environmental compensation, being pertinent to the issue involved is reproduced hereinunder:

“The Environmental Compensation shall be based on the following formula:

$$EC=P1 \times N \times R \times S \times L \times F$$

Where, EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R=A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

The formula incorporates the anticipated severity of environmental pollution in terms of Pollution Index, duration of violation in terms of number of days, scale of operation in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations.

Note:-

- a. The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40 respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
- b. N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by PCB/SPCB/PCC.
- c. R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
- d. S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
- e. LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

SL.No.	Population* (Million)	Location Factor # (LF)
1.	Less than 1	1.0

2.	1 to <5	1.25
3.	5 to <10	1.5
4.	10 and above	2.0

**Population of the city/town as per the latest Census of India*

#LF will be 1.0 in case unit is located >10km from municipal boundary

For critically polluted area/Ecologically Sensitive areas, the scope of LF may be examined further.

f. In any case, minimum Environmental Compensation shall be R 5000/day."

8. In the backdrop of the above, it is relevant to take note of that on 28.06.2019, a show cause notice was issued to the Executive Director of the petitioner. From the contents of said show cause notice, it transpires that certain reports were received that there was no mobile effluent treatment plant for treatment of effluents of waste pits of the well No. (i) G-132A-Rig E-1400-1 (ii) LMES-SBS-Rig E-1400-IV, (iii) GKKB-H-Rig E-1400-VI, (iv) LKGP-H-Rig E-1400-21, (v) LKGQ-E-2000-VI, (vi) GKIB-9E-3000-I, (vii) GKIW-EV-2000-IV & (viii) KGDB-EV-2000-V. It was further mentioned that during inspection by the officials of the Regional Laboratory Office, Sivasagar, it was observed that there was seepage/leakage in the waste pits of the aforementioned wells and the waste pits were full of effluents and without any treatment facility present. The petitioner was, therefore, informed that the petitioner had violated the provisions of law, in force, causing pollution to the environment. Therefore, in exercise of the powers under Section 33(A) of the Water (Prevention & Control of Pollution) Act 1974, the petitioner was directed to show cause within 15 days

from the date of issue of the said show cause notice as to why the units referred to in the said notice should not be directed to be closed.

9. The petitioner, upon receipt of the showcase notice submitted a reply on the 18.07.2019 to the respondent No.2. In the said reply, it was mentioned that out of the 8 numbers drilling Rigs which were mentioned in the show cause notice, 4(four) numbers of Rigs were in Rig building position or not in drilling operations, and, as such, the question of generating effluents did not arise. However, as regards the other 4(four) numbers of drilling rigs, i.e. (i) E-1400-IV, (ii) E-1400-VI, (iii) E-1400-XXI and (iv) EV-2000-V which were in operations, it was stated that the waste cutting were being collected in HDPE sheets lined on waste pit. It was also mentioned that tankers have been deployed to collect the effluent and transferred to the old ETP-Geleky wherein there is a Primary Effluent Treatment Plant installed for treatment of the collected effluent. In addition to that, it was mentioned that effluent tankers were also utilized to maintain an average of 38 to 40 trips per day for effluent collections. Further to the above, it was also stated that 4(four) numbers of primary effluent treatment plants are deployed in Rigs Armcue-1, E-1400-XIII, E-2000-IX & EV-2000-III and were maintained under O & M contract, which was awarded to State PCBA approved agency. In addition to that, the effluent analysis reports from the PCBA recognized/reputed laboratory as well as effluent analyzed by the Ministry of Environmental Forest recognized agency hired by ONGC stipulated that the effluent so discharged were within the permissible limits. It was also mentioned that hiring of 11(eleven) No. of effluent treatment plants were under process and to be deployed within 3(three) months at all the Rigs in Assam Asset.

10. It is further seen from the records that pursuant to the show cause reply, the Member Secretary of the respondent No.2 had issued a communication on

05.09.2019, whereby environmental compensation fine of Rs.2,04,90,000/- had been imposed upon the petitioner and the petitioner was directed to pay the same by way of a bank draft within one month from 05.09.2019. In addition to that, the petitioner was also asked to take necessary steps for proper treatment of the effluent and drill cut in all the ongoing drill sites and arrange for reclamation of the completed drill sites. This communication dated 05.09.2019 is primarily the subject matter of the challenge in the instant writ proceedings. The other communications dated 26.09.2019 and 23.10.2019 are reminders to the communication dated 05.09.2019 which are also challenged in the instant proceedings.

11. This Court vide order dated 23.10.2019 issued notice and as an interim measure directed that no coercive measures shall be taken by the respondent No.2 for recovery of the amount till the returnable date. The said interim order, thereafter, has been continued from time to time.

12. It is further seen from the records that an affidavit in opposition was filed by the respondent No.2 in support of the imposition of the environmental compensation fine by the impugned letter dated 05.09.2019 and to the said affidavit, various photographs have also been enclosed showing the environmental damages which have been caused. From a perusal of the said affidavit, it transpires that the entire action which has been taken for issuance of the communication dated 05.09.2019 is based upon the order passed by the Supreme Court dated 22.02.2019, as well as the order dated 19.02.2019 by the learned NGT, Principal Bench. To the said affidavit-in-opposition, the petitioner had filed an affidavit-in-reply reiterating its stand so taken in the writ petition and also averred that the petitioner duly had the consent to operate from the State PCB in all the Rigs in question.

13. In the background of the above, let this Court take note of the respective submissions of the learned counsels for the parties.

14. Mr. I Choudhury, the learned senior counsel appearing on behalf of the petitioner submitted that even without going much detail in respect to the merits of the matter, it would be seen that the impugned communication dated 05.09.2019 is *ex-facie* in violation of the principles of natural justice. Elaborating his submissions, the learned senior counsel submitted that a perusal of the show cause notice dated 28.06.2019, would show that there were allegations that in respect of 8(eight) Rigs, the petitioner did not have the mobile effluent treatment plant and as such, the petitioner was asked to show cause as to why the petitioner's units should not be closed. He, therefore, submitted that in the said show cause notice, there was reference to untreated effluents being discharged to the paddy fields which the respondents came to learn on the basis of certain inspection being carried out. He submitted that as to when the inspection was carried out and under whose presence and supervision, the said inspection had been carried out, were mentioned in the said show cause notice. He further submitted that this aspect is also silent in the affidavit so filed by the respondent No.2.

15. The learned senior counsel further submitted that a perusal of the impugned communication dated 05.09.2019 would shows that pursuant to the issuance of the show cause notice, inspections were carried out from 06.07.2019 to 08.07.2019 and it was found that 6(six) drilling operations were being carried out without installing any primary effluent treatment plant. The learned senior counsel submits that out of the 6(six) Rigs, Rig E-2000-9, LKGP, Lakwa did not feature in the show cause notice. He further submitted that the further basis on which the compensation had been assessed is on the basis of

an analysis report based upon samples collected during 6th and 8th of August 2019 and in respect to that also there was no show cause notice asking the petitioner to explain the alleged infractions. The learned senior counsel further referring to the Annexure-I to the communication dated 05.09.2019 submitted that as regards the manner in which the compensation has been assessed is without any basis, *inasmuch as*, there is no material as such as to how the respondent No.2 arrived at that there was a violation of the directions passed by the Supreme Court on 22.02.2017. Referring to the computation so made with respect to the Rigs at Sl.No.6 of Annexure-I of the impugned communication dated 05.09.2019, he submitted that in respect to this Rig, it is seen that the number of days of violation has been stated to be 10(ten) days and for the period after the show cause notice has been issued. He, therefore, submitted that the computation made on the basis of the methodology so formulated by the learned NGT, Principal Bench, is without any application of mind and this aspect would be apparent from the fact that in respect to the Sl.No.4, the violation had been mentioned for the period from 08.12.2015 to 22.02.2016, when at that relevant point of time, the Supreme Court directions were not in existence. He, therefore, submitted that this impugned communications are required to be set aside and quashed including the Analysis report dated 05.08.2019.

16. *Per contra*, Mr. S Baruah, the learned Standing Counsel, State Pollution Control Board submitted that action so taken for imposing the environmental compensation fine is as per the mandate of the order of the Supreme Court dated 22.02.2017, as well as the order dated 19.02.2019 of the learned NGT, Principal Bench. He submitted, drawing reference to the analysis report dated 05.08.2019, that the environmental compensation fine had been imposed on

account of the spillage of oil and there being no reclamation activity observed. He further submitted that on the basis of the analysis report which is apparent, the methodology so mandated by the learned NGT, Principal Bench was duly applied on the basis of the reports of the experts and consequently, the imposition of the environmental compensation fine was imposed. He therefore, submitted that as no other conclusion can be arrived at on the basis of the materials on record, this Court ought not to interfere with the impugned communication dated 05.09.2019 on the ground of violation of the principles of natural justice. Mr. S Baruah, the learned counsel, however, in his usual fairness submitted that the analysis report dated 05.08.2019 was not furnished to the petitioner. But later on, when the petitioner sought for the report, the same was provided to the petitioner.

17. In the backdrop of the above materials on record, as well as the submissions so made by the learned counsels for the parties, the question which arises for determination is as to whether the impugned communication dated 05.09.2019, as well as the other consequential letters are required to be interfered with on the ground of not affording the petitioner any opportunity before imposition of the environmental compensation fine.

18. From the materials on record, it is apparent that the show cause notice was issued not for the purpose of imposition of the environmental compensation fine. The show cause notice was issued in respect to 8(eight) Rigs and as to why the said Rigs should not be closed down on account of not installing mobile primary effluent treatment plants.

19. Be that as it may, it is also seen that on 06.07.2019 to 08.07.2019, inspections were carried out and on the basis thereof, an analysis report was made on 05.08.2019. Admittedly, this report dated 05.08.2019 was not

furnished to the petitioner at any point of time, till the petitioner requested for the said report before filing of the instant writ petition. It is further seen that the impugned communication dated 05.09.2019 also refers to another analysis report in respect of samples collected from 6th to 8th August 2019. However, the said analysis report is neither a part of the instant proceedings nor have been placed before this Court. What has been placed before this Court is only the analysis report dated 05.08.2019 which is based upon the inspection carried out from 06.07.2019 to 08.07.2019.

20. However, from the perusal of the impugned communication dated 05.09. 2019, it is seen that it is on the basis of the analysis report dated 05.08.2019 and another undated analysis report made on the basis of the samples collected from 6th to 8th August 2019, that the environmental compensation fine had been imposed upon the petitioner.

21. The impugned communication dated 05.09.2019 imposes civil liability upon the petitioner and under such circumstances, it being a well settled principle of law that when civil consequences ensue on the basis of certain orders being passed, there is a requirement that the principles of natural justice is required to be followed. This is so in view of the mandate of Article 21 of the Constitution. In addition to that fairness of action can only be achieved when an order imposing civil consequences is prejudiced by way of a notice. It is equally important to observe that a notice issued should contain all materials on the basis of which the Authority proposes to rely upon for passing the order.

22. Under such circumstances, as is apparent from the letter 05.09.2019 that the principles of natural justice have been violated and there was no notice being issued in respect to imposition of environmental compensation fine and the basis on which the fine is to be imposed, this Court is of the opinion that the

impugned communication dated 05.09.2019 and all other consequential communications issued on the basis thereof are required to be interfered with. Accordingly, the impugned communication dated 05.09.2019 as well as the communications dated 26.09.2019 and 23.10.2019 are all set aside and quashed.

23. Before parting with the records, this Court, however, makes it clear that the analysis report dated 05.08.2019, though challenged, this Court is not interfering with the same. However, the petitioner herein would be at liberty to challenge the veracity of the findings in the analysis report dated 05.08.2019 before the respondent authorities; should the respondent No.2 issue any show cause notice for imposition of environmental compensation fine basing on the said analysis report dated 05.08.2019 or any other analysis report.

24. It is further made clear that the setting aside of the communication dated 05.09.2019, as well as the communications dated 26.09.2019 and 23.10.2019 would not prejudice the respondent No.2 to take such action as otherwise permissible under the law, including the proceedings for imposing environmental compensation.

25. Writ petition, accordingly, stands disposed of.

JUDGE

Comparing Assistant