

Court No. - 2

Case :- WRIT - C No. - 8804 of 2023

Petitioner :- M/S Suraj Builders Thru Proprietor Ashish Khemka

Respondent :- State Of U.P. Thru Prin.Secy. Deptt. Of Environment Forest And Climate Change And Ors.

Counsel for Petitioner :- Sarvesh Kumar Tiwari,Devesh Srivastava,Lalta Prasad Misra,Prashant Kumar,Satish Gulati

Counsel for Respondent :- C.S.C.,Ashok Kumar Verma

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. Heard.

2. This petition was ordered to be connected with Writ-C No.5559 of 2022: *M/S Express Builders and Promoters Pvt. Ltd Thru. Authorized Signatory vs. State of U.P. Thru. Prin. Secy. Environment, Forest and Climate Change and ors.* vide order dated 12.10.2023 passed by this Court, which reads as under:-

"1.Heard Dr. L.P. Misra, alongwith Shri Prashant Kumar, learned counsel for the petitioner, Shri Ashok Kumar Verma, learned counsel for respondent Nos.2, 3, 5 and learned Standing Counsel for State-respondent Nos.1, 6, 7.

2. Dr. L.P. Misra, learned counsel for the petitioner, drawing our attention to the orders passed by the National Green Tribunal, has argued that even if the directions issued by the National Green Tribunal are assumed to be a source of power for the U.P. Pollution Control Board to proceed against the petitioner but the fact remains that no opportunity whatsoever was given to the present petitioner before passing of the impugned order dated 16.08.2023 as contained in Annexure No.1 to the writ petition.

3.Before embarking on the point of opportunity, learned counsel for the petitioner, has also raised a vital question as to the jurisdiction of National Green Tribunal delegating the power of holding enquiry to U.P. Pollution Control Board as regards the environmental damage, loss whereof may be realised through the Nodal Authority i.e. U.P. Pollution Control Board. This contention has been raised in view of the provisions of Section 3 of the Environment (Protection) Act, 1986 read with the Notification issued by the Central Government dated 28.02.2014 as contained in Annexure No.2 to the writ petition.

4. Identical matters have also been pointed out to be pending before this Court and an order to that effect passed by this Court in Writ-C No.5559 of 2022 on 26.08.2022 has also been placed before the Court.

5. Shri Ashok Kumar Verma, learned counsel appearing for the U.P. Pollution Control Board, on the other hand, has justified the exercise of power to be in furtherance of various orders passed by National Green Tribunal, however, he was unable to explain the denial of opportunity satisfactorily. Even if it is assumed that the order impugned herein was passed by affording due opportunity as directed by the National Green Tribunal, yet, the arguments on the question of jurisdiction would require consideration.

6. Considering the peculiar facts and circumstances of the case, this Court is of the view that the matter requires consideration. Prima facie, a case for interim relief is made out.

7. Respondents duly represented may file a counter affidavit within three weeks bringing on record the letters dated 27.06.2023 and other correspondence in relation to the complaint.

8. Let notice be issued to respondent No.4. Steps be taken within a week.

9. Connect and list alongwith Writ-C No.5559 of 2022: M/S Express Builders and Promoters Pvt. Ltd. Thru. Authorised Signatory vs. State of U.P. Thru. Prin. Secy. Environment, Forest and Climate Change and Ors.

10. Till the next date of listing, the effect and implementation of the impugned order dated 16.08.2023, shall remain in abeyance."

3. The issued involved herein is similar to the issue involved in the Writ-C No.5559 of 2022. Issue is as to the competence and jurisdiction of U.P. Pollution Control Board to impose environmental compensation/damage while Writ-C No.5559 of 2022, the counter affidavit had not been filed, however, in this case the counter affidavit has been filed by the U.P. Pollution Control Board stating that the State Government has directed them to realize the environmental compensation/damage.

4. We asked Shri Ashok Kumar Verma, learned Counsel for the U.P. Pollution Control Board as also Shri Aakash Sinha, learned Standing Counsel for the State as to under which provision of law, State Government issued such a direction to the U.P. Pollution Control Board, however, neither of them could show any such provision. We have already held in our order dated 05.08.2024 passed in Writ-C No.5559 of 2022 that the U.P. Pollution Board does not have any such jurisdiction or power. The order dated 05.08.2024 reads as under:-

"1. Heard.

2. This petition has been filed seeking the following reliefs:-

"i. To issue a writ, order or direction in the nature of Certiorari whereby quashing the impugned order dated 18.05.2022 passed by the Respondent No. 2 (Contained as Annexure No. 1) and any incidental proceedings arising thereto;

ii. To issue a writ, order or direction in the nature of mandamus commanding the opposite parties, not to proceed further in pursuance of the impugned order 18.05.2022 passed by Respondent No.2.

iii. To issue a writ, order or direction in the nature of mandamus commanding the opposite parties, not to initiate any proceedings against the Petitioner in pursuant to the reports submitted by the Joint Committee till the disposal of OA No. 245 of 2021 (Vineet Sinha Versus Union of India and Ors) pending before Hon'ble NGT, Principal Bench at New Delhi.

vi. To issue a writ, order or direction in the nature of Certiorari whereby quashing the consequential order dated 03.06.2022 passed by the Respondent No. 2 (Contained as Annexure No. 22) and any incidental proceedings arising thereto;

v. To issue a writ, order or direction in the nature of mandamus commanding the Respondent No.2 to grant the CTO to the Petitioner Company under Section 21 & 22 of the Air (Prevention & Control of Pollution) Act, 1981 as well as Section 25 & 26 of the Water (Prevention & Control of Pollution) Act, 1974.

vi. To pass any other such orders or directions, as be deemed fit and proper by this Hon'ble Court in the circumstances of the case, to meet the ends of justice; and

vii. Award costs of the writ petition in favour of the Petitioner against the opposite parties, forthwith to impart due justice."

3. On 26.08.2022, we had passed the following order:-

"Heard Dr. L.P. Misra, learned counsel for petitioner, learned Additional Chief Standing Counsel for the State, Shri Ashok Kumar Verma, learned counsel for Uttar Pradesh Pollution Control Board and Shri Waseeq Uddin Ahmed, learned counsel for opposite party no.

5.

This Court had passed the following order on 23.08.2022:-

"Prima facie so far as relief no.1, 2 and 3 are concerned, we are of the opinion that the proceedings before the N.G.T. are pending in respect thereof, therefore, this Court would not encroach upon the said proceedings by passing any order in this petition subject ofcourse to further arguments in this regard on the next date of listing.

Let Sri Ashok Kumar Verma, learned counsel for the Uttar Pradesh

Pollution Control Board place before the Court the relevant records and seek instructions explaining the reasons given in the impugned order dated 03.06.2022, contained in annexure no.22, relating to refusal of consent for sewer treatment plant and generator emission clearance.

List on 26.08.2022 as fresh."

By means of this writ petition three decisions of the Uttar Pradesh Pollution Control Board (hereinafter called 'the Board') are under challenge.

These decisions are contained in Annexure No. 1 and 22. Annexure No. 22 contains two decisions dated 03.06.2022 by which the consent sought by the petitioner for further operation of Sewage Treatment Plant and for Generator Emission in the project known as Express Builders and Promoters Ltd. The said Sewage Treatment Plant and Generator have been operating in the premises in question since long. Consent had been given by the Pollution Control Board till 2019, but, as informed by Shri Ashok Kumar Verma, learned counsel for the Board the petitioner did not apply for the requisite consent under Section 21 and 22 of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'the Act, 1981') and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (hereafter referred to as 'the Act, 1974'). Such application for consent was given only in the year 2022.

On a perusal of the two orders contained in Annexure No. 22 we find that the reason given for refusing the consent under the Act, 1981 is firstly that as per the RO report the unit was found defaulter during earlier joint inspection dated 16.10.2021. Based on it, the Board has issued a show cause notice dated 13.12.2021. Secondly, the National Green Tribunal has passed some order on 18.10.2021 in O.A. No. 245 of 2021; Vineet Sinha Vs. Government of India and Ors. in pursuance of which a Joint Committee visited the site and recommended environmental compensation of Rs.7.4654 Crore against the unit. Hence, the consent to operate has been refused. Similar is the reasoning given in the other order annexed as part Annexure No. 22 passed under the Act, 1974. Both the orders are dated 03.06.2022. They relate to Sewage Treatment Plant and Generator Emission.

Shri Ashok Kumar Verma, learned counsel for the Board has produced before us the original records containing the show cause notice dated 13.12.2021. We asked him to show us the inspection report, if any, dated 06.10.2021 but he invited our attention to the show cause notice dated 13.12.2021.

We have perused the show cause notice. From the contents of the show cause notice it appears that certain irregularities were noticed in the operation of the Sewage Treatment Plant, however, we do

not find any reference therein to any irregularity and illegality with regard to the operation of the Generator for the purposes of consent under the Act, 1981.

We further asked Shri Verma as to when notice dated 03.06.2022 under the Act, 1981 as also the notice of the same date under the Act, 1974 was served upon the petitioner, Shri Verma very fairly submitted that we do not have any proof of service of notice. In Para 38 of the writ petition petitioner has denied receiving any such notice. Moreover, from the original records surprisingly enough we find that there is no inspection report dated 06.10.2021 instead based on the inspection conducted on 06.10.2021 the report has been prepared as late as on 11/11.2021 or 12/11/2021 as the same has been signed by the concerned on the said date, which is also quite intriguing.

Without any such proof of service it is surprising as to how the impugned orders contained in Annexure No. 22 has been passed, more so, with regard to the Generator Emission as there is nothing in the show cause notice dated 13.12.2021 with regard to the operation of the Generator. Prima facie, the said orders appear to be unsustainable for the reasons aforesaid.

As regards the other reason given in the said orders with regard to the imposition of environmental compensation of Rs.7.4654 Crore against the unit Dr. L.P. Misra, learned counsel for petitioner has submitted that no doubt the four-member joint Committee of CPCB, State PCB, SEIAA and NOIDA was directed by the NGT to verify the facts and take remedial action, but, the power to impose environmental compensation aforesaid does not vest with the Board. These arguments were not advanced on the earlier date when we had passed an order on 23.08.2022.

We have confronted Shri Verma as to under which provision environmental compensation can be imposed by the Board Shri Verma has referred to Section 33-A of the Act, 1974 and Section 31-A of the Act, 1974, however, we are of the opinion that environmental compensation is being imposed by the Board in pursuance to the observations of the NGT based on the violation of the condition of the Environmental Clearance according to which as against G+18 floors, G+19 floors were constructed by the project proponent i.e. the petitioner, a fact which is mentioned in the impugned order contained in Annexure No. 1. We fail to understand as to how the Act, 1974 and the Act, 1981 which deal with Air Pollution and Water Pollution apply or give power to the Board to order such compensation, if the reason for it is the construction of G+19 floors instead of G+18 floors. Moreover, the said provision contained in Section 33-A and 31-A is only regarding issuance of general directions by the Central Pollution Control Board or State Board. There is no provision therein empowering the U.P. Pollution Control Board to impose any penalty or environmental

compensation. There has to be specific provision in the Act empowering the U.P. Pollution Control Board to impose Environment Compensation as according to the petitioner it is in the form of a penalty, which does not exist. As of now, Shri Verma has not been able to show such a provision.

Dr. L.P. Misra, learned counsel for petitioner says that if at all, this action could be taken, it could possibly be taken by the State Environment Impact Assessment Authority (SEIAA) which was also part of the joint Committee, but, of course this is without prejudice the rights of the petitioner to contest this issue also.

He invites our attention to some orders passed by this Court in Writ - C No. 2139 of 2022 and Writ - C No. 2610 of 2022, which according to him, are also matters where same proceedings are pending before the NGT as are being relied in this case by the opposite parties and this Court has interfered and passed interim order protecting the interest of the petitioner on the ground that the Board does not have the authority to levy environmental compensation/ penalty. these orders were not placed before us on the earlier date.

Having heard learned counsel for the parties we are of the opinion that so far as the impugned orders contained in Annexure No. 22 are concerned, the same for the reason already mentioned hereinabove are apparently unsustainable, prima facie. For convenience the reasons may be reiterated. Firstly, the notice dated 13.12.2021 was never served upon the petitioner. The records does not show any such proof of such service. In the absence of service the petitioner was denied opportunity to rectify the deficiencies which were noticed in the inspection dated 06.10.2021. Secondly, as pointed out earlier, notice does not point out any deficiency so far as operation of Generator is concerned, therefore, it is inexplicable as to how the consent has been refused for the said purpose.

We can also not loose sight of the fact that the unit in question is a residential building. The health and hygiene of the inhabitants would be put to be jeopardy if the consent is refused by the Board with regard to the aforesaid facility but at the same time we are also conscious of the obligation of the petitioner to rectify the deficiency, therefore, we stay the impugned orders contained in Annexure No. 22, but, direct the petitioner to remove the deficiency pointed in the notice dated 13.12.2021 which shall be served upon the petitioner within a period of one week by the Board. A photocopy of which shall be handed over by Shri Verma to Dr. L.P. Misra, learned counsel for petitioner today itself so that the petitioner may immediately start taking steps for removing the deficiency. The Board shall conduct a fresh inspection of the premises on 19.09.2022 and thereafter, it shall reconsider the application of the petitioner for consent under Section 21/22 of the Act, 1974 and

under Section 25/26 of the Act, 1981. The decision shall be taken and communicated to the petitioner before the next date. It shall also be brought on records of these proceedings.

As regards the order impugned in Annexure No. 1 we stay the same for the reasons already discussed, but, we make it clear that if any authority is competent to levy the environmental compensation as per law in pursuance to any orders of the NGT or the NGT itself is to levy such compensation our order shall not come in the way and the said authorities of the Tribunal shall be free to proceed and impose such compensation upon the petitioner as may be leviable, subject of course to the rights of the petitioner, if any, to raise objection or challenge in this regard as per law.

The pendency of this writ petition and the stay of Annexure No. 1 shall not be made a ground for denying consent under the aforesaid provisions of the Act, 1974 and the Act, 1981, if other parameters are satisfied.

Issue notice to the opposite party no. 4.

Pleading be exchanged between the parties within a period of eight weeks.

List immediately thereafter along with Writ - C No. 2139 of 2022 and Writ - C No. 2610 of 2022."

4. Till date, no counter affidavit has been filed by Pollution Control Board to demonstrate the power/ jurisdiction under which it could have imposed environmental compensation for violation of environment clearance. Even today, we asked Sri Ashok Kumar Verma, learned counsel for the contesting opposite party to satisfy us on this score but he fairly submitted that the power and jurisdiction lies with the National Green Tribunal and not with the Pollution Control Board.

5. In view of this, we see no reason to keep this matter pending any further. We have also been informed that National Green Tribunal, New Delhi has imposed environmental compensation to the tune of Rupees Fifteen Crores. The said order of N.G.T. has been challenged by the petitioner herein before the Supreme Court of India by filing an appeal bearing Civil Appeal No(s).8421 of 2022 wherein an interim order has been passed. Learned counsel for the petitioner says that said case is a different matter.

6. Be that as it may, so far as the order impugned before us is concerned, the same has been passed by U.P. Pollution Control Board and apparently, it does not have the power to impose compensation and learned counsel for the Pollution Control Board has not been able to satisfy us to the contrary. Therefore, we quash the impugned order with the observation that if any authority is competent to levy the environmental compensation as per law in pursuance to any orders of the NGT or the NGT itself is to levy such compensation our order shall not come in the way and the

said authorities or the Tribunal shall be free to proceed and impose such compensation upon the petitioner as may be leviable, subject of course to the rights of the petitioner, if any, to raise objection or challenge in this regard as per law.

7. As regards relief no.(iv) in the writ petition pertaining to quashing of order dated 03.06.2022 by which the consent under the Air (Prevention & Control of Pollution) Act, 1981 as well as the Water (Prevention & Control of Pollution) Act, 1974 was declined, subsequent to passing of the interim order, the consent has been granted, however, subject to this writ petition. In any case, now that we are allowing this writ petition, the order granting such consent will continue as per law.

8. Accordingly, the writ petition is allowed in the aforesaid terms."

5. We may in this very context, refer to the decision of Hon'ble Supreme Court reported in **2022 SCC OnLine SC 120: Kantha Vibhag Yuva Koli Samaj Parivartan Trust and others vs. State of Gujarat and Others**, wherein it has been held that power to impose environmental compensation/damage vests with the National Green Tribunal, which cannot abdicate or delegate it to any administrative expert committee.

6. In this case, learned Counsel for the respondents have not placed before this Court any such order of the National Green Tribunal, however, we make it clear that this order is being passed without prejudice to the jurisdiction of the National Green Tribunal to take such action as may be permissible in law or any other authority also to take such action as may be permissible in law in respect of the subject matter in issue.

7. This petition is also **allowed** in the aforesaid terms meaning thereby the order impugned herein, which is one by which the U.P. Pollution Control Board has imposed the environmental compensation upon the petitioner on 16.08.2023 is hereby **quashed** on the ground of lack of jurisdiction.

[Om Prakash Shukla, J.] [Rajan Roy, J.]

Order Date :- 3.10.2024

Piyush/-