

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (C) No. 2216/2021

M/S Joinery Mill and Saw Mill ...Appellant/Petitioner(s)
 By its Proprietor
 Nazir Ahmad Dagga, age about 60 years,
 S/O: Ghulam Mohammad Dagga,
 R/O: Pushwara, Khanabal District: Anantnag,
 J & K
 Through: Mr. Mir Majid Bashir, Adv.

Vs.

1. Jammu and Kashmir State Pollution Control ...Respondent(s)
 Committee by its Regional Director
 Kashmir, Srinagar
2. Deputy Commissioner Anantnag
3. District Officer, J&K Pollution Control
 Committee, Anantnag
4. Tehsildar, Anantnag

Through: Ms. Nadiya, Adv. vice
 Mr. Mohsin Qadiri, Sr. AAG

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGEMENT (ORAL)

05.05.2025

1. The factual background of the instant petition is that the petitioner is the proprietor of M/S Joinery and Saw Mill Anantnag which was established and registered way back in the year 1968 and the petitioner through the medium of the instant petition is aggrieved of the unwarranted, illegal and arbitrary interference and harassment at the instance of the respondents in operating and functioning the aforesaid Joinery and Saw Mill at the behest of some frivolous and anonymous

- complaint, the details of which have not been furnished to the petitioner nor the copy of the same has been furnished to the petitioner.
2. The further case of the petitioner is that the father of the writ petitioner established the aforesaid joinery and saw mill way back in the year 1968 which was also registered and at that relevant point of time, the Pollution Control Board was not in existence and there was no requirement of getting consent of the Pollution Control Board, to operate such joinery and saw mill. The writ petitioner stepped in the shoes of his father and was running the aforesaid joinery mill uninterruptedly without any hindrance till such complaint was filed in the year 2021.
 3. The further case of the petitioner is that on the basis of the anonymous complaint, the respondent No. 1 issued notice dated 15.07.2021 to the petitioner for taking necessary remedial measures and was directed to file compliance report within 15 days, failing which it was conveyed to the petitioner that the legal action will be taken against him. The aforesaid notice was followed by yet another notice dated 10.09.2021 which is the subject matter of the instant petition.
 4. It is the specific case of the petitioner that, he has applied for No Objection Certificate (consent order) from the Pollution Control Board now Pollution Control Committee and assured

them that all preventive/remedial measures have been taken by him as is evident from the reply submitted by the petitioner which has been placed on record along with the instant petition.

5. The further case of the petitioner is that the petitioner is running the joinery and saw mill as on date, however, he submits that he has already taken the remedial measures as envisaged under law and till date, the respondents have not taken any action in furtherance thereof and feeling aggrieved thereby, the instant petition has been preferred.
6. Per contra, the reply has been filed on behalf of the respondents in which the respondents have taken a specific stand that no industrial unit can be installed or run without proper consent from the Pollution Control Committee as has been prescribed under Section 25/26 read with Section 21 of the Water (Prevention and Control of Pollution) Act, 1981 respectively.
7. It is a specific case of the respondents that the unit in question has been established and made operational without any mandatory consent of the J&K Pollution Control Committee and several complaints against the operation of the petitioner unit have been received by the respondents which have been verified and as a consequence thereof the petitioner has been

- served a legal notice on 15.07.2021 followed by yet another notice on 10.09.2021, whereupon, the petitioner was asked to show cause as to why legal action against the unit, including its closure, be not taken as the petitioner was running the unit in gross violation of the rules in vogue.
8. The respondents have specifically pleaded in their reply affidavit that the petitioner is operating the unit unauthorisedly and illegally without mandatory consent from the Pollution Control Committee and thus, is responsible to compensate the destruction caused to the environment under the pollution laws.
 9. The further case of the respondents is that the issuance of the show cause notice to the petitioner is in no way violative of the right of the petitioner as has been projected and on the other hand, the respondents in conformity with the power vested in J&K Pollution Control Committee under Section 33(A) of the Water (Prevention & Control of Pollution) Act 1974 read with Section 31(A) of the Air (Prevention and Control of Pollution) Act 1981 has issued the same for flouting the environmental laws by the petitioner and the petitioner cannot be permitted to run the unit without the mandatory consent from the respondent-Pollution Control Committee.
 10. Heard learned counsel for the petitioner and respondents at length and perused the record. With the consent of Ld. Counsel

for both the parties, the instant writ petition is taken up for final disposal.

11. There is no denial of the fact that the unit of the petitioner was registered way back in the year 1968 and the same is being run as on date and even the respondents have allowed the petitioner to run the same after coming into force the pollution laws and no objection was ever raised by the respondents till anonymous complaint was filed. It appears that the respondents have arisen from a deep slumber and have issued a notice to the petitioner to take remedial measures only when some anonymous complaint was filed.

12. As per the report submitted by the Pollution Control Committee, Anantnag, the unit of the petitioner is operational without the mandatory consent of the Pollution Control Devices/Pollution Control Measures. There is no denial of the fact that no unit having bearing on the environment can be established or put in operation without the mandatory consent of the Pollution Control Committee and without proper Pollution Control Devices/Measures as envisaged under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The report which has been submitted in this regard reveals that the unit of the petitioner is functioning without a mandatory consent and

without Pollution Control Devices/Measures. Since the operation of the unit of the petitioner is in flagrant violation of the aforementioned pollution laws, which is a punishable offence in terms of Section 5 of the Environment Protection Act, the unit of the petitioner can be closed for such continuous violation.

For facility of reference, relevant portion of Section 25 of Water (Prevention & Control of Pollution) Act 1974 and Section 21 of Air (Prevention and Control of Pollution) Act, 1981 are reproduced as under:

“21. Restrictions on use of certain industrial plants subject to the provisions this section, no person shall , without the previous consent of the state board, establish or operate any industrial plant in an air pollution control area.

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.]

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution

control area, operates in such area any industrial plant,
2***such person shall make the application under
this sub-section within such period (being not less than three
months from the date of such declaration) as may be prescribed
and where such person makes such application, he shall be
deemed to be operating

such industrial plant with the consent of the State Board until
the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit
in respect of the application for
consent referred to in sub-section (1) and in making any such
inquiry, shall follow such procedure as may
be prescribed.

(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,
1[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]:

2[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) Every person to whom consent has been granted by the
State Board under sub-section (4), shall
comply with the following conditions, namely:—

(i) the control equipment of such specifications as the State
Board may approve in this behalf
shall be installed and operated in the premises where the
industry is carried on or proposed to be
carried on;

(ii) the existing control equipment, if any, shall be altered or
replaced in accordance with the
directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this

behalf shall be erected or re-erected in such premises; and

(v) such other conditions as the State Board, may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period

as the State Board may specify in this behalf:

*Provided that in the case of a person operating any industrial plant 3*** in an air pollution control*

area immediately before the date of declaration of such area as an air pollution control area, the period so

specified shall not be less than six months:

Provided further that—

(a) after the installation of any control equipment in accordance with the specifications under

clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions

of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected

except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any

of the conditions referred to in sub-section (5) require or requires variation (including the change of any

control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon

such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4)

transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

25. Restrictions on new outlets and new discharges.—4 [(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988 (53 of 1988), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under subsection (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in subsection (1) and in making any such inquiry shall follow such procedure as may be prescribed.

[(4) The State Board may—

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all

reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.]

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,—

(a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression “new discharge” means a discharge which is not, as respects to nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

13. In the light of the aforesaid statutory provisions coupled with the fact that the unit of the petitioner was running without mandatory consent from the Pollution Control Committee, the petitioner was issued a show cause notice to take remedial measures within a period of 15 days, failing which it was conveyed that strict legal action can be taken against the petitioner. The record reveals that the show cause notice has

been duly replied by the petitioner in which it is stated that the petitioner has taken the remedial measures by applying for NOC from the Pollution Control Committee and has assured to take all preventive steps and measures in conformity with the pollution laws.

14. Admittedly, the petitioner has taken the measures whatever was required on his part and the decision is required to be taken by the respondents, which till date has not been taken and instead the petitioner has been allowed to operate his joinery and saw mill. It is an admitted stand of the respondents that even after coming into force the pollution laws, the unit of the petitioner was functioning uninterruptedly without any hindrance till a complaint was filed. Even after filing of such anonymous complaint, the unit is functioning as on date.

15. At this stage, the learned counsel for the petitioner further submits that additionally, if, anything more is required on part of the petitioner to be done in conformity with the pollution laws, he undertakes and assures that the same will be done by the petitioner.

16. It is also a settled legal principle that compliance with environmental norms, including the mandatory requirement of obtaining Environmental Clearance/NOC, is not a mere procedural formality but a substantive obligation. The

establishment or expansion of any industrial unit must be strictly conditioned upon fulfillment of environmental standards.

17. The doctrine of sustainable development and the rights of future generations necessitate strict enforcement of pollution control laws. The Hon'ble Supreme Court has consistently held that under no circumstances can polluting industries be allowed to operate unchecked, thereby degrading the environment and compromising public health. Economic **development must proceed in harmony with ecological preservation.**

18. The Hon'ble Supreme Court in the case titled as ***Pahwa Plastics Private Limited and another vs. Dastak Ngo and Others***, reported in **(2023) 12 Supreme Court Cases 774: 2022 SCC OnLine SC 362** has held as follows:

62. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

19. In view of the discussions made hereinabove, no fruitful purpose would be served to keep this petition alive and with

the consent of learned counsel for the parties, same is disposed of by directing the petitioner to take all the remedial measures within a period of one month from today.

20. The petitioner is directed to take all necessary pollution control measures/devices in conformity with the pollution laws within the aforesaid period and subject to taking all such remedial measures, the respondents 1 and 3 are directed to take a final decision in this regard within a period of one month thereafter. Till such decision is taken by the respondents, status quo as it exists today shall be maintained.

21. It is further made clear that in case the petitioner fulfils all the statutory requirements as envisaged under the environment law by taking the remedial measures, the respondents 1 and 3 shall issue 'consent to operate' to the petitioner within the aforesaid period. The continuance of the petitioner's unit thereafter shall be subject to the decision which is likely to be taken by respondents 1 and 3.

22. The writ petition is ***disposed of*** in the manner indicated above along with all applications

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR
05.05.2025
Sakeena

Whether order is speaking: Yes/No
Whether order is reporting: Yes/No.