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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5114/2016

KRISHNA CONTINENTAL LTD. ..... Petitioner

Through Ms.Jyotika Kalra with Mr.Raghvendra Singh Parihar, Advocates.

versus

DELHI POLLUTION CONTROL COMMITTEE & ORS ..... Respondents

Through Mr.Sanjeev Ralli with Mr.Vinod Kapoor and Mr.Dinesh Jindal, Advocates for R-1.
Ms.Shiva Lakshmi, CGSC with Mr.Vinod Tiwari, Advocate for R-2.
Mr.Alok Kumar with Mr.Neeraj Kumar Gupta, Advocate for R-3.

% Date of Decision: 2nd June, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: (Oral)

1. Present writ petition has been filed seeking a direction to respondent no. 1-DPCC to refund Rs. 39,54,900/- to the petitioner along with interest @18% p.a. from the date of deposit till its realisation.

2. The admitted facts are that the petitioner has been running a Hotel in the name and style of M/s. Silver Ferns Hotel since 1993.

3. On 30th April, 2013 petitioner was served with a show cause notices under Sections 33(A) of the Water (Prevention & Control of Pollution) Act, 1974 (for short 'Act, 1974) and Section 31(A) of Air (Prevention Control of Pollution) Act, 1981(for short 'Act 1981') wherein the following serious deficiencies were pointed out:-

1. *Unit was found in operation and engaged in hotel activity with 40 rooms.*
2. *ETP not installed for waste water discharge from the hotel.*
3. *No consent obtained from DPCC (CTE&CTO).*
4. *Unit is having one boiler.*

4. On 25th June, 2013, petitioner received a modified direction to install adequate effluent treatment plant to treat the effluent and submit effluent analysis report. Petitioner was further directed to submit an application for consent under the Act, 1974 as well as the Act, 1981.

5. It is the case of the petitioner that under the threat of imminent closure and penal actions, it filed an application dated 19th August, 2013 with a demand draft of Rs.41 lakhs as condonation fee with respondent no. 1 under protest seeking consent to operate. It is the case of the petitioner that it was liable to pay Rs. 46,000/- only as per the previous fee structure.

6. Learned counsel for petitioner states that the Act, 1974 and Act, 1981 do not authorise the respondent no.1 to levy penalty/fine in the garb of condonation fee retrospectively at an exorbitant rate of Rs.2,00,000/- per annum from the date of establishment of Hotel.

7. On the other hand, learned counsel for respondent no.1, who appears on advance notice, submits that the present writ petition is not maintainable as the petitioner has solely prayed for refund of money.

He points out that there is no challenge to the fee structure or to the revised fee schedule of respondent no.1.

8. Learned counsel for respondent no.1 further submits that the present writ petition is not maintainable as the petitioner has not approached this Court with clean hands inasmuch as the petitioner had been running its Hotel without obtaining a "consent to establish" and "consent to operate" and without installation of any anti-pollution equipment for the last twenty years.

9. In rejoinder, learned counsel for the petitioner states that by way of grounds, she has challenged the fee schedule as well as the jurisdiction of respondent no.1 to increase the fee. She further states that the petitioner should not be penalised for innocent non-compliance of laws. Since the counsel for the petitioner heavily relies on paragraph 16.13 of the writ petition, the same is reproduced hereinbelow in its entirety:-

> " *16.13. Because the petitioner had always been very keen to follow the law, and has been following all the instructions as issued by the authorities from time to time, although it is the established principal that ignorance of law is no excuse, still before a person is being held liable for any of the violations, there must be adequate warning or knowledge about the statutory compliance, if for any reason, the petitioner failed to follow any ofthe govt. regulations, the innocent non-compliance should not be confronted with the undue enrichment of the respondent no.1 and the maxim is also there to protect the ignorant "Lex security ignorant"(law assists the ignorant)."*

10. Learned counsel for the petitioner also relies upon the judgment of the Division Bench of this Court in ***Delhi Pollution Control Committee Vs. Splendor Landbase Ltd., LPA No.895/2010***.

11. Having heard the learned counsel for parties, this Court is of the opinion that a writ petition solely praying for refund of money against the State is not maintainable. In ***Suganmal Vs. State of Madhya Pradesh, AIR 1965 SC 1740***, the Supreme Court has held as under:-

> *"6. On the first point, we are of opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax. We have been referred to cases in which orders had been issued directing the State to refund taxes illegally collected, but all such cases had been those in which the petitions challenged the validity of the assessment and for consequential relief for the return of the tax illegally collected. We have not been referred to any case in which the Courts were moved by a petition under Article 226 simply for the purpose of obtaining refund of money due from the State on account of its having made illegal exactions. We do not consider it proper to extend the principle justifying the consequential order directing the refund of amounts illegally realised, when the order under which the amounts had been collected has been set aside, to cases in which only order for the refund of money are sought. The parties had the right to question the illegal assessment orders on the ground of their illegality or unconstitutionality and therefore could take action under Article 226 for the protection of their fundamental right, and the courts, on setting aside the assessment orders, excerised their jurisdiction in proper circumstances to order the consequential relief for the refund of the tax illegally realised. We do not find any good reason to extend this principle and therefore hold that no petition for the issue of a writ of*

mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right.

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9. We, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the civil Court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases be appropriately raised and considered in the exercise of writ jurisdiction."

12. Neither in ***Mafatlal Industries Ltd. & Ors. Vs. Union of India & Ors., (1997) 5 SCC 536*** nor in ***Delhi Pollution Control Committee*** (supra), the said judgment of the Supreme Court has been overruled. It is pertinent to mention that in ***Mafatlal Industries Ltd. & Ors.*** (supra) the Supreme Court dealt with an issue under Excise and Customs Act, whereas the Division Bench judgment in ***Delhi Pollution Control Committee*** (supra) dealt with the power and jurisdiction of DPCC to levy penalties under the Act, 1974 and the Act, 1981 and not with regard to legality and validity of fee schedule – which arises in the present case. This Court also finds that there is no prayer in the writ petition to strike down the revised fee schedule. Consequently, no relief with regard to the fee schedule can be granted to the petitioner.

13. At this stage, learned counsel for the petitioner wishes to amend the writ petition. However, this Court is of the opinion that the present writ petition is liable to be dismissed on another ground also inasmuch as the petitioner has not approached this Court with clean hands as it had been polluting the city for the last twenty years i.e. from 1993 to

2013. During this period, neither a "consent to establish" nor a "consent to operate" had been obtained by the petitioner.

14. To say that the lapse on the part of the petitioner was an innocent non-compliance is to trivialise a statutory provision which has a direct and vital impact on the life of the citizens of this city. Since a very important and salutary provision of the environmental law has not been complied with by the petitioner for nearly twenty years, this Court is of the view that the petitioner's writ petition cannot be entertained by this Court in exercise of equitable jurisdiction under Article 226 of the Constitution.

15. Accordingly, the present writ petition is dismissed.

MANMOHAN, J

JUNE 02, 2016
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