

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13308 of 2017

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Niraj Kumar, Son of Ashok Kumar Gupta, Resident of Village- Bari Dargah, Police Station- Biharsharif, District - Nalanda.

.... Petitioner/s

Versus

1. The Union of India through the Director, Ministry of Micro Small and Medium Enterprises, New Delhi.
2. The State of Bihar through Principal Secretary, Environment Pollution Department.
3. The District Magistrate, Nalanda District Nalanda.
4. The District Industrial Officer, District- Nalanda.
5. The Chairman, Bihar State Pollution Control Board, Parivesh Bhawan NSB - 2, Patliputra, Patna - 800010.
6. The Regional Officer, Bihar State Pollution Control Board Parivesh Bhawan NSB 2 Patliputra, Patna - 800020.
7. The Member Secretary, Bihar State Pollution Control Board, Parivesh Bhawan, NSB 2 Patliputra, Patna - 800020.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Adv.
Mr. Rabindra Prasad Singh, Adv.
For the Respondent/s : Mr. Shivendra Kishre, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-11-2017

Heard Mr. Siya Ram Shahi, learned counsel appearing for the petitioner and Mr. Shivendra Kishore, learned senior counsel appearing of the Bihar State Pollution Control Board (hereinafter referred to as 'the Board').

The petitioner is aggrieved by the order dated 19.8.2017 at Annexure-3, whereby the establishment of the petitioner had been directed to close its operation, inter alia, on grounds of not obtaining permission of 'Consent to Operate' as stipulated under the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred



to as 'the Water Act') and the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the 'Air Act').

Mr. Shahi, learned counsel appearing for the petitioner has invited the attention of this Court to a letter of the Regional Officer of 'the Board' that even when a show cause notice has been issued by the Regional Officer on 17.8.2017 fixing the date on 12.9.2017, the order of closure has been passed on 19.8.2017.

Mr. Kishore, learned senior counsel appearing for 'the Board' has invited the attention of this Court to the 'Consent to Establish' order at Annexure-2 to submit that clause (i) of the condition specifically stipulates that the petitioner would have to obtain 'Consent to Operate' under the 'Air Act' prior to commissioning of plant which has not been done by the petitioner.

Responding to the argument, Mr. Shahi submits that although complaint was received in respect of Chintu Agro Food Industry but it is proceeding against the said complaint that the petitioner has been subjected to penalty.

I have heard learned counsel for the parties and I have perused the records.

The order at Annexure 2 and the notice at Annexure R5/B of the counter affidavit of 'the Board' are operating in different field. While it is the failure on the part of the petitioner to obtain



‘Consent to Operate’ order as mandated in the ‘Consent to Establish’ order present at Annexure 2 which has led to the order dated 19.8.2017 at Annexure-3 directing him to close his establishment, on the other hand the notice dated 17.8.2017 is a notice under the ‘Consent to Establish’ order for failing to observe with the stipulations present therein and for which an opportunity was granted to the petitioner to represent on 12.9.2017.

It is undisputed that until passing of the impugned order at Annexure 3, no application for obtaining ‘Consent to Operate’ was filed by the petitioner which, according to Mr. Shahi, has been done subsequently.

In the circumstances no cause is made for indulgence or for interference with the notice under challenge impugned at Annexure 3 or the show cause at Annexure R5/B of the counter affidavit.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.11.2017
Transmission Date	NA

