

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11617 of 2014

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India Rubber Product Industries through its Proprietor Putul Kumar Sharma,
resident of 'Vidya Arjun Niwas', Mohalla - Sindhua Toli, Belwanganj, Post-Office -
Gulzarbagh, Police Station - Alamganj, District - Patna 800007.

.... Petitioner/s

Versus

1. State of Bihar through Principal Secretary, Department of Industries, Govt. of Bihar, 2nd Floor, Vikas Bhawan, New Secretariat, Bailey Road, Patna.
2. Chairman, Bihar State Pollution Control Board, BELTRON BHAWAN, Shastri Nagar, Patna - 800020.
3. Member Secretary, Bihar State Pollution Control Board, BELTRON BHAWAN, Shastri Nagar, Patna - 800020.
4. Director of Industries, Department of Industries, Government of Bihar, 2nd Floor, Vikas Bhawan, New Secretariat, Bailey Road, Patna.
5. General Manager, District Industries Centre, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar, Adv. Mr. Rajesh Kumar, Adv.
For the Respondent-Board :	:	Mr. Shivendra Kishore, Sr. Adv. with Ms. Binita Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-09-2017

Heard Mr. Ajay Kumar, learned counsel appearing for the petitioner and Mr. Shivendra Kishore, learned senior counsel appearing for the Bihar State Pollution Control Board and its authorities.

By the order impugned at Annexure-10 dated 29.8.2013 passed by the Chairman, Bihar State Pollution Control Board (hereinafter referred to as 'the Board') in purported exercise of powers vested under section 31A of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the 'Air Act') that



the petitioner has been directed to close his industrial plant for non-compliance of the provisions of the 'Air Act'.

The petitioner is also aggrieved by the order passed by the Member Secretary of 'the Board' dated 7.2.2014, whereby he has rejected the application filed by the petitioner on 27.9.2013 seeking 'Consent to Operate' under the provisions of the 'Air Act' and the Water (Prevention & Control of Pollution) Act, 1974 (hereinafter referred to as the 'Water Act') inter alia, on receipt of a public complaint, a copy of which is impugned at Annexure 14.

The short facts leading to the matter in contest is that the petitioner is a proprietorship firm established in the year 1978 for operating Rubber Washer and Rubber Products Manufacturing Unit in the name of India Rubber Product Industry at Mohalla- Chalital, P.S. Alamganj, Patna City. The unit was subsequently shifted to Vishwakarma Mandir, Dadar Mandi, Patna in the year 1984 after seeking due permission from the District Industries Centre, Patna. The petitioner filed an application on 25.5.2012 under section 21 of the 'Air Act' and the provisions of the 'Water Act' for obtaining 'Consent to Establish' before the respondent-Board, a copy of which is present at Annexure-4. It is accepting the prayer that the respondent Board vide order bearing Memo No.13489 dated 8.8.2012 granted 'Consent to Establish' (NOC) to the petitioner



subject to certain stipulations present in the order one of which required him to obtain 'Consent to Operate' under section 21 of the 'Air Act' prior to commissioning of the plant. The note found at the foot of the order also stipulated that the NOC would be valid for a period of six months. Meaning thereby it was valid until 8.2.2013.

It is not in dispute rather it is the admitted position that the petitioner did not bother to file any application under section 21 of the 'Air Act' seeking 'Consent to Operate' and thus by virtue of the stipulations present in the 'Consent to Establish' order at Annexure-5, the permission lost its validity.

In the meantime, some kind of public complaint was received in 'the Board' complaining against the functioning of the petitioner-Unit without ensuring compliance of the pollution measures and which has led to the passing of the order dated 29.8.2013 by the Chairman of 'the Board' under section 31A of 'the Air Act', whereby the Chairman while taking notice of the fact that the petitioner-Unit was operating without obtaining a 'Consent-to Operate' from 'the Board' as required under the law, has also taken note of consequential penal provisions which stood attracted and issued restraint order against the petitioner from operating the plant with immediate effect.

It is after the order as contained in Annexure 10 was



passed that the petitioner woke up from slumber to inform the Chairman of 'the Board' about the lapse in obtaining 'Consent to Operate'. In the process of rectifying the error that the petitioner again applied for obtaining 'Consent-to- Establish' (NOC) in terms of section 25 and 26 of 'the Water Act' read alongside section 21 of 'the Air Act', a copy of which is present at Annexure-12 and which was filed on 20.09.2013. Alongside the petitioner also filed an application for 'Consent to Operate' on 27.9.2013, a copy of which is present at Annexure 13. Even before the application of the petitioner filed before 'the Board' for obtaining 'Consent to Establish' could be considered and disposed of that it is proceeding on a public complaint that the Member Secretary of 'the Board' by the order impugned dated 7.2.2014 at Annexure 14 has proceeded to reject his application seeking 'Consent to Operate' present at Annexure-13 to the writ petition. It is feeling aggrieved by this action of the respondents that the petitioner is before this Court.

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

In so far as the order at Annexure-10 passed by the Chairman is concerned, no apparent infirmity can be found in view of the admitted circumstances where the petitioner after obtaining 'Consent to Establish' vide Annexure 5 has failed in applying for



‘Consent to Operate’ as per the stipulation present in the ‘Consent to Establish’ order and which position has been accepted by him vide his letter present at Annexure-11. The order as contained in Annexure-10 would confirm that it is simply on the failure of the petitioner to abide the stipulations present in the ‘Consent to Establish’ order present at Annexure-5 that has led to the issuance of the restraint order present at Annexure 10 which confirmingly does not require any interference at the present stage.

The issue is whether in view of the fact that the petitioner has filed a fresh application for ‘Consent to Establish’ in terms of the statutory provisions, a copy of which is present at Annexure-12 and which remains pending before ‘the Board’ since 20.9.2013 and even before any order can be passed thereon, the Member Secretary was justified to reject the application filed by the petitioner seeking ‘Consent to Operate’ present at Annexure-13 to the writ petition.

In my opinion, the Member Secretary of ‘the Board’ has committed a serious illegality in rejecting the application of the petitioner seeking ‘Consent to Operate’ even when his application seeking ‘Consent to Establish’ remains pending before ‘the Board’ for disposal. Although it was submitted by Mr. Kishore, learned counsel for ‘the Board’ that a ‘Consent to Establish’ order is a one time exercise but this submission would have to be tested against the



stipulation present at Note (3) of the 'Consent to Establish' order at Annexure 5 which carried a validity of 6 months.

It is further submitted by Mr. Shivendra Kishore, learned senior counsel appearing for 'the Board' that the Member Secretary who passed the order at Annexure-14, is also competent to dispose of the application of the petitioner seeking 'Consent to Establish' at Annexure-12. He also informs that since there is a change in the office of the Member Secretary, the petitioner should have no apprehension on a fair disposal.

Having heard learned counsel for the parties and in the circumstances so discussed, I am of the opinion that the applications of the petitioner filed for obtaining 'Consent to Establish' at Annexure 12 submitted on 20.9.2013 together with his application seeking 'Consent to Operate' filed on 27.9.2013, both required a disposal in accordance with law by the competent authority of 'the Board' but until such time that a positive decision was taken on those applications by the competent authority, the Member Secretary ought not to have entertained the public complaint to reject the application of the petitioner seeking 'Consent to Operate'.

For the reasons aforementioned the order dated 7.2.2014 of the Member Secretary of 'the Board' present at Annexure-14 is patently illegal and is accordingly quashed and set aside.



The writ petition is allowed with a direction to the Member-Secretary or the competent authority of ‘the Board’, to consider the applications filed by the petitioner for obtaining ‘Consent to Establish’ present at Annexure 12 as well as his application for seeking ‘Consent to Operate’ afresh and with an independent mind without being prejudiced by the earlier order passed by the predecessor in office on 7.2.2014 and dispose of the same in accordance with law and with opportunity of hearing to the petitioner within a period of six weeks from the date of receipt/production of a copy of this judgment.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02-11-2017
Transmission Date	NA

