

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2533 of 2017

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M/s Naturals Dairy (P) Ltd., a company registered under the Companies Act, 1956 having its registered office at 225, Ashoka Place, Exhibition Road, P.S.- Gandhi Maidan, Town and District Patna through its Managing Director Sri Hemant Kumar Das, son of Sri Awadhesh Kumar Das, resident of 504, White House, Block- A, Budha Marg, P.S.- Kotwali, Town and District- Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Environment and Forest, Government of Bihar, Patna.
2. Principal Secretary, Department of Environment and Forest, Government of Bihar, Patna.
3. The Bihar State Pollution Control Board, through its Chairman, Parivesh Bhawan, Plot No. NS-B/2, Patliputra Industrial Area, Patliputra, Patna.
4. The Chairman, Bihar State Pollution Control Board, Parivesh Bhawan, Plot No. NS-B/2, Patliputra Industrial Area, Patliputra, Patna.
5. The Member Secretary, Bihar State Pollution Control Board, Parivesh Bhawan, Plot No. NS-B/2, Patliputra Industrial Area, Patliputra, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Adv.
Ms. Aditi Hansaria, Adv.

For the Respondent/s : Ms. Binita Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 05-12-2017

Heard Mr. Nikhil Kumar Agrawal, learned counsel appearing for the petitioner and Ms. Binita Singh, learned counsel appearing for the Bihar State Pollution Control Board (hereinafter referred to as 'the Board').

With the consent of the parties the writ petition has been heard with a view to its final disposal at the stage of admission itself.

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the order/direction contained in letter bearing No. T. 1302 dated 10.2.2017 of the Chairman of 'the Board' passed in purported exercise of power vested under section 31A of the Air



(Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the 'Air Act') read alongside section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the 'Water Act') whereby and whereunder the petitioner has been directed to close its operation.

In substance, the allegation facing the petitioner is that it has not been operating its unit in compliance of statutory prescriptions. There were complaints of leakage of ammonia gas as well as delayed application for renewal of the 'Consent to Operate' order and which led to the expiry of the 'Consent to Operate' order issued by 'the Board' and the cumulative effect of which default has led to the closure order impugned at Annexure 10.

Having heard learned counsel for the parties and having perused the records, in my opinion the order put to challenge in the writ petition has failed to abide by the statutory prescription underlying rule 34(3) of the Water (Prevention & Control of Pollution) Rules, 1975 and rule 21A(3) of the Air (Prevention & Control of Pollution) Rules, 1983 inasmuch as the establishment concerned is entitled to an advance notice before any direction for closure is issued in purported exercise of power vested in the statutory authority under section 33A of the 'Water Act' and section 31A of the 'Air Act' and which admittedly was not served on the petitioner before the impugned order was passed by the Chairman.



The issue arises, what happens next because even if the closure order impugned herein goes yet in absence of ‘Consent to Operate’ order, the petitioner cannot operate its manufacturing unit. I am thus of the opinion that an interference with the order impugned herein at the present stage would be a plain formality because in absence of ‘Consent to Operate’ order, its quashing and remand, would not be making any difference at this stage.

Mr. Agrawal appreciating the position has invited the attention of the Court to the submission put forth by the petitioner through the supplementary affidavit in which he has stated that while the renewal application for grant of ‘Consent to Operate’ order has been filed and is pending consideration before ‘the Board’, the defect whatsoever which was pointed out has since been removed by them and the matter now awaits an inspection by a team of ‘the Board’ for final decision on grant of ‘Consent to Operate’ order, under the enactments in question.

Responding to the supplementary affidavit that a supplementary counter affidavit has been filed by Ms. Binita Singh, learned counsel appearing for ‘the Board’ and who while not disputing that the application filed by the petitioner for issuance of grant of ‘Consent to Operate’ order is yet pending before the ‘Board’ submits that since there were certain obligations to be carried out by the petitioner before the inspection could be carried out for a



decision on issuance of 'Consent to Operate' order, hence the delay.

It is stated that the stand of the petitioner on the removal of the defects would require verification by the inspection team. Such statement is present at paragraphs 9 to 11 of the supplementary counter affidavit filed today.

It is next submitted by Mr. Agrawal and not contested by Ms. Singh that an inspection can only take place while the petitioner establishment is in working condition and thus until such time that the closure direction would continue, the petitioner would not be in a position to operate and the inspection would be meaningless.

Having heard learned counsel for the parties and in the circumstances so discussed, where the application(s) of the petitioner under the 'Air Act' and the 'Water Act' are pending consideration before the respondent-Board for issue of a 'Consent to Operate' order thereunder and that a meaningful inspection can only be carried out while the manufacturing unit of the petitioner is in operation, this Court while directing the 'Board' and its authorities to dispose of the application(s) filed by the petitioner for issuance of 'Consent to Operate' order under 'the Water Act' as well as 'the Air Act' by carrying out the required inspection within a maximum period of 4 weeks from today, would stay the operation of the impugned order passed by the Chairman of 'the Board' dated 10.2.2017 which would allow the petitioner to operate his



establishment for a meaningful inspection with a caution that this interim order should not be treated as a permission to get engaged in business purposes rather the permission is to enable ‘the Board’ and its authorities to complete the exercise on the issue of ‘Consent to Operate’ order.

It goes without saying that the interim order passed by this Court to stay the closure order of the Chairman passed in purported exercise of power vested under section 31A of ‘the Air Act’ alongside section 33A of ‘the Water Act’ dated 10.2.2017 impugned at Annexure 10 shall abide by the final outcome of the exercise.

It also goes without saying that should ‘the Board’ decide in favour of the petitioner the order would cease to operate.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11-12-2017
Transmission Date	NA

