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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4777 OF 2017

JSW Steel Coated Products Ltd. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

Dr. Milind Sathe, Sr. Counsel a/w Prasad Dani, Sr. Counsel a/w Saket Mone, Vishesh Karla, Subit Chakrabarti i/b Vidhi Partners, for the Petitioners.

Mr. V. P. Malvankar, "A" Panel Counsel for Respondent Nos. 1 and 11

Ms. Neeta Msurkar a/w S. G. Thakur, for Respondent No. 2 – UOI.

Ms. Sharmila Deshmukh, for Respondent No. 7.

Ms. Gayatri Singh, senior counsel i/b Ms. Meenaz Kakalia, for Respondent Nos. 3 to 6.

CORAM : V. M. KANADE, &
C. V. BHADANG, JJ.

DATE : MAY 2, 2017

PC.

1. Heard Dr. Milind Sathe, learned senior counsel appearing for the Petitioners, Ms. Gayatri Singh, learned senior counsel appearing on behalf of Respondent Nos. 3 to 6, Ms. Sharmila Deshmukh appearing on behalf of Respondent No. 7 and Mr. V. P.

Malvankar, learned “A” panel counsel appearing on behalf of Respondent Nos. 1 and 11.

2. By this petition, which is filed under Article 226 and 227 of the Constitution of India, the Petitioners are challenging the order dated 8th March, 2017 passed in Misc. Application No. 352 of 2016 (annexed at Exhibit “A”) and order dated 9th September, 2016 passed in Application No. 64 of 2016 (annexed at Exhibit “B”) by the National Green Tribunal, Western Zone Bench, Pune (for short “NGT”).

3. The Petitioners in the present case intends to set up a new plant at Tarapur MIDC. The application of the Petitioners has been rejected on various grounds by the NGT. In our view, the entire controversy can be resolved if the Petitioners are directed to make a fresh application for grant of consent / NOC to establish new plant. We accordingly direct the Petitioners to make an application to the Maharashtra Pollution Control Board (for short the “MPCB”) without prejudice to their rights and contention for grant of consent / NOC to establish a new plant within a period of 2 weeks from today, which shall be strictly in accordance with the provisions of the Water

(Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 read with the Rules framed thereunder, having zero liquid discharge for their proposed unit at Plot No. B6 / 1 / 1 in the Tarapur Industrial Area. The Petitioners shall make this application in compliance with the Central Pollution Control Board (for short the “CPCB”) Guidelines dated 31st March, 2016.

4. At this juncture, it would be relevant to point out that the orders passed by the NGT in the earlier applications. The NGT in Application No. 37 of 2013 vide order dated 2nd July, 2015 was pleased to put an embargo and directed the Maharashtra Pollution Control Board (for short the “MPCB”) not to grant any permission to establish / expand any plant without obtaining prior consent of the NGT.

5. Being aggrieved by the said order, petitions were filed in this Court. The Division Bench of this Court (Coram : Mohit S. Shah, C. J. & A. K. Menon, J.) by an order dated 13th August, 2015 was pleased to modify the said order and direct that if an industrial unit which wants to expand or set up a new plant gives an undertaking that there is zero liquid discharge and takes no objection from the MIDC,

then permission can be granted by the MPCB. It is also clarified that the permission from NGT is not required and only intimation is required to be given to the NGT.

6. In the matter of *M/s. Medley Pharmaceuticals Ltd. Vs. State of Maharashtra & Ors in Writ Petition No. 393 of 2017* after the said order dated 13th August, 2015 was passed, Petitioner therein i.e. *M/s. Medley Pharmaceuticals Ltd.* approached the MIDC seeking its no objection certificate. Since the Petitioner in the said case was informed that MIDC does not have an expertise to grant such NOC, this Court by an order dated 15th February, 2017 directed Respondent No. 2 therein to consider request of the Petitioners without insisting NOC from the MIDC. The Petitioner approached this Court again and in a subsequent matter it was clarified that in place of word “MIDC”, the word “MPCB” is substituted. The Petitioner thereafter approached the MPCB, who was pleased to grant NOC stating therein that there would be zero liquid discharge from the Petitioner's industry.

7. Secondly, in *Procat LLP Vs. State of Maharashtra & Ors. (in Writ Petition No. 3373 of 2017)* this Court further clarified that MPCB shall within three weeks consider the Petitioner's

application without insisting upon prior permission from the NGT and / or no objection from the MIDC.

8. In the earlier two cases, the Petitioner therein wanted to expand their plant. However, in the present case the Petitioners intend to establish a new plant and as such therefore, the Petitioners should make a fresh application as mentioned hereinabove. It is clarified that Petitioners shall comply with all the provisions mentioned in para 3 above and it should be in compliance with the CPCB Guidelines dated 31st March, 2016 and the rules framed thereunder. The MPCB shall grant no objection certificate to the Petitioners only after the compliance of the provisions of the Act and Rules mentioned in para 3 above is made by them. The MPCB shall pass an appropriate order uninfluenced by the aforesaid orders passed by this Court, subject to the modifications which have been made by this Court in the said two petitions, within 4 weeks. Under any circumstance, whether the consent / NOC is granted or not, the MPCB (Respondent No. 7) may intimate its decision to the NGT. Writ petition is accordingly disposed of in the aforesaid terms.

9. Ms. Gayatri Singh, the learned counsel appearing for

Respondent Nos. 3 to 6 submitted that the Supreme Court has granted stay to the orders which are mentioned hereinabove. She invited our attention to orders dated 18th April, 2016 and 11th May, 2016. She submitted that therefore operation of the orders passed by the High Court is stayed. She further submitted that by virtue of the first order dated 18th April, 2016, the impugned order has been stayed by the Apex Court.

10. On the other hand, Dr. Sathe, learned senior counsel submitted that in fact the Apex Court though initially granted stay to the two impugned orders by its order dated 18th April, 2016, in the subsequent order dated 11th May, 2016 it is clarified that the stay was granted only to the payment of any amount by the parties.

11. It must be pointed out that initially the NGT has directed the Corporation to deposit an amount of Rs. 15 crores to Ulhasnagar Municipal Corporation and and Rs. 5 crores so far as other municipal councils are concerned. On 18th April, 2016 the Apex Court passed the following order:

“Delay condoned.
Issue notice.

In the meantime, the operation of the impugned order shall remain stayed.”

Thereafter on 11th May, 2016 the Apex Court passed the following order:

“Heard learned Attorney General and learned senior counsel appearing for the parties.

List these Special Leave Petitions in the third week of July, 2016.

Until further orders, we make it clear that there will be a stay only of payment of any amount by the parties till next date of hearing. The earlier order dated 18.04.2016 is modified at the present to this extent.”

12. It is not possible to accept the submission of Ms. Gayatri Singh, learned senior counsel. Upon a conjoint reading of two orders, it is abundantly clear that though by the first order 18.4.2016 the operation of the entire order was stayed, by the subsequent order dated 11.5.2016 the Apex Court had modified the said order and restricted the stay only to the payment of any amount by the parties. As such therefore, the orders passed by this Court have not been completely stayed and stayed only to the extent of payment of the amount.

Sd/-
[C. V. BHADANG, J.]

Sd/-
[V. M. KANADE, J.]