

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2923/2016

(M/s Gopani Iron & Power (India) Pvt. Ltd. and another vs. Maharashtra Pollution
Control Board, Mumbai and another)

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders
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Court's or Judge's order

**CORAM : B.P. DHARMADHIKARI &
MRS.SWAPNA JOSHI,JJ.**

DATED : 13th February, 2017.

1. Heard Adv. Bhangde for petitioners and Adv. Sanyal for respondents.

2. In this matter on 20th May 2016, this Court has granted interim relief and, therefore, M.S. Billet unit commissioned by petitioners in 2012 is continuing. The petitioners had sought renewal of permission to operate. The permission was given to them in 2012 for a period of five years and they are seeking renewal thereof, for further period of five years i.e. 2016 to 2020. By the impugned communicated dated 27.4.2016 renewal is rejected for following reasons :

“ It was decided to return the application to the industry and inform the industry that the application for 1st consent to operate for expansion will be considered only after submission the copy of Environmental Clearance accorded by SEIAA and industry shall not

operate the expansion unit unless obtain consent to operate from the Board. ”

3. Adv. Bhangde submits that, thus, a ground available when the initial permission to operate was granted is now being raised for the first time on the eve of renewal. Without prejudice, he submits that environmental clearance permission has been given to petitioners as per law for installing M.S. Billet Casting Plant within the existing sponge iron plant by the State Environmental Impact Assessment Authority and demand for producing formal certificate of environmental clearance is unsustainable. According to him, as per policy decision and statutory provisions this resolution of SEIAA itself is a public document and it serves as an environmental clearance certificate also.

4. Lastly, he adds that similar deeming provisions exist in Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. Hence, the belated decision by the respondents that too on the eve of renewal, is *non-est*.

5. Adv. Sanyal attempts to demonstrate that only permission to establish unit was given and respondents have never thereafter given any consent to commission M.S.Billet unit. As such, the operations commenced in 2012 by petitioners are illegal. He further adds that resolution of SEIAA on which petitioners are placing reliance, is not a certificate of environmental clearance. Unless and until such a certificate

formally issued by that authority, petitioners have no right to move respondents seeking consent to operate.

6. While hearing respective counsel, we find that according to petitioners, after they commenced production in M.S. Billet unit, respondents have conducted inspections from time to time and no objections have been raised. Adv. Sanyal has been seeking time to obtain instructions in detail, about such inspection or its outcome.

7. We find that controversy has arisen only after petitioners sought renewal for subsequent five years i.e. 2016 to 2020. The renewal sought is of earlier consent to operate. When there was no such objection and no formal certificate asked for while granting earlier such consent, insistence thereupon, at this juncture of renewal, therefore, raises some disputed questions.

8. As material on record is insufficient, we are not inclined to delve deep into any disputed questions. We are concerned with the fact that a unit which needs environmental clearance has been operating on the strength of interim orders of this Court passed on 20th May 2016. If petitioners are right and they have complied with necessary formalities, their unit must continue. However if respondents are right and there is any environmental hurdle, the unit cannot continue.

9. Whether SEIAA issues a formal clearance certificate or not is therefore the moot question. If formal certificate is not issued and resolutions passed by it are uploaded and permitted to be used as a public document, why petitioners cannot use

that resolution and seek consent to operate is the other question. Here, such a consent to operate appears to have been given to petitioners and on its strength, the petitioners have operated for about five years. The respondents are disputing grant of such consent. Effort of respondents to show that even in law such a consent to operate cannot be deemed to have been given.

10. We, therefore, continue the interim order already operating in favour of petitioners for a period of three months more. Petitioners are directed to appear before respondent no.1, on 27th February, 2017 and to abide by its further instructions in the matter. The respondent no.1 shall take a fresh decision to find out eligibility and entitlement of petitioners to renewal sought for, within next two months. If necessary, an opportunity of hearing shall be given to petitioners.

11. If orders passed are adverse, the interim stay granted by this Court shall continue for two more weeks thereafter and shall cease to operate automatically.

12. The Writ Petition is, thus, partly allowed and disposed of. No costs.

JUDGE

JUDGE

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