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Haryana State Pollution Control Board

....Applicant.

Versus

M/s Hans Raj and Co.

....Respondent.

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sukhandeep Singh, Advocate for
Mr. Lokesh Sinhal, Advocate for the applicant.

Ramendra Jain, J.(Oral)

Through this application under Section 378(4) read with Section 372 of the Code of Criminal Procedure (for short, 'Cr.P.C.), prayer has been made for grant of leave to file appeal against the judgment of acquittal dated 29.12.2015 passed by learned Presiding Officer-cum-Judicial Magistrate Ist Class, Special Environment Court, Faridabad in case No.62 of 2009 titled as 'Haryana State Pollution Control Board vs. M/s Hans Raj & Co. under Sections 21 and 22 punishable under Sections 37 and 38 of The Air (Prevention and Control of Pollution) Act, 1981 (for short, 'the Act').

Briefly stated, according to the applicant-complainant, the respondent, in open auction held on 02.04.2004 conducted by Mining & Zoology Department, Haryana, obtained a contract of mining at Plot No.1, situated at village Amarpur Jorasi, Narnaul, District Mahendergarh and started the mining work without obtaining necessary N.O.C. from the applicant-Board. Consequently, despite issuing several notices to show

cause to the respondent, as to why action should not be taken against him for violating the provisions of Sections 21 & 22 of the Act, he did not pay any heed to any of the notices forcing the applicant-Board to file a complaint under Sections 21 & 22 punishable under Sections 37 & 38 of the Act, against the respondent, which, after due trial, has been dismissed by the trial Court vide impugned judgment dated 29.12.2015.

Learned counsel for the applicant contended that in view of the provisions of Section 21 read with Section 22 of the Act, the respondent was required to obtain consent of the applicant-Board before starting its mining operation. The respondent despite issuance of various notices kept on violating the provisions of Section 21 and 22 of the Act. The learned trial Court, without appreciating the fact that no industry can be established and mining operation can be done in the controlled area without obtaining consent of the applicant-Board, has wrongly dismissed the complaint.

After giving thoughtful consideration to the submissions made by learned counsel for the applicant, this Court finds the instant application completely devoid of any merit for the reasons to follow.

For ready reference, Section 21 of the Act is reproduced hereunder:-

“21. Restrictions on use of certain industrial plants. –

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Sec. 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) *An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:*

Provided that where any person, immediately before the declaration not any area as an air pollution control area, operates in such area any industrial plant. Such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) *The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.*

(4) *Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, [and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:] Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refused further consent after such expiry if the conditions subject to which such consent as has been granted are not fulfilled: Provided further that before canceling a consent or refusing a further consent under the first proviso, reasonable opportunity of being heard shall be given to the person concerned.*

(5) *Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:*

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on:

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in CI. (i) or CI. (ii) shall be kept at all times in goods running conditions;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;

(v) such other conditions as the State Board may specify in this behalf; and the conditions referred to in CIs.(i), (ii), and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that –

(a) after the installation of any control equipment in accordance with the specifications under CI. (i) or,

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under CI. (ii), or

(c) after the alteration or re-erection of any chimney under CI. (iv), no control equipment of chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment either in whole or in part,) the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.”

The definition of “industrial plant” used in the aforesaid Section is defined in Section 2(k) of the Act, according to which, “industrial plant” means any plant used for any industrial or trade purposes and emitting any air pollutants into the atmosphere.

On perusal of the above provisions of the Act, it is manifestly clear that consent of the Pollution Control Board has to be obtained only by the “industrial plant” which emits any air pollutants into the atmosphere and not otherwise.

In the instant case, there is no iota of evidence on the record that the plant and machinery, allegedly installed by the respondent, was emitting any pollution. No inspection in this regard or any other evidence, what to talk of any cogent or convincing, was led by the applicant on the record. Section 22 of the Act envisages that no person operating any “industrial plant”, in any air pollution control area, shall discharge or cause or permit to be discharged the emission of any air pollutants in excess of the standards, laid down by the State Board under clause (g) of sub-section (1) of Section 17 of the Act.

Learned counsel for the applicant, during the course of arguments, has miserably failed to prove on record that till date any standard has been laid down/fixed by the applicant-Board for discharge or emission of any air pollutants. Statement of CW1 Balrat Ahlawat is completely vague on all material particulars. It seems that he, half heartedly, deposed on behalf of the applicant-Board just to complete the formality without caring or sensing the seriousness of the allegations levelled against the respondent in the complaint. This witness, in his cross-examination, has categorically admitted that he did not ever notice the respondent doing the mining activities.

Moreso, the applicant has also miserably failed to prove on record that respondent had ever emitted any air pollutants. Even no sample of air pollutants, allegedly, emitted by the respondent, was ever collected or

taken by the officials of the applicant-Board, despite specific provisions contained in Section 26 of the Act in this regard.

The present litigation is an example of harassing the general public at large by taking advantage of the official position by the Government functionaries.

This Court has gone through the impugned judgment and finds no illegality or perversity in the same.

In view of the above discussion, the application seeking grant of leave under Section 378(4) Cr.P.C. is dismissed with costs of ₹20,000/- to be paid by the applicant-Board to the respondent for unnecessary harassment to it.

The copy of order be sent to the respondent Company for information.

(RAMENDRA JAIN)
JUDGE

17.08.2017
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No