

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25318 of 2016
Date of decision: 17.4.2017

M/s Arun Ice Factory & Ors.

.... Petitioners

Versus

Haryana State Pollution Control Board & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON,
HON'BLE MR. JUSTICE DARSHAN SINGH.

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Manvender Chauhan, Advocate for the petitioners.

Mr. S.S. Pannu, DAG, Haryana for the State.

Mr. Lokesh Sinhal, Advocate for the respondents – Haryana State
Pollution Control Board.

S.S. Saron, J.

The petitioner M/s Arun Ice Factory and others who are engaged in water packaging activity have filed the present petition under Articles 226/227 of the Constitution of India seeking quashing of the impugned orders (Annexure P-5 colly.) passed by the Haryana State Pollution Control Board, Panchkula ('Board' – for short) (respondent No.1) whereby the Units of the petitioners have been sealed and that too without providing them adequate time to comply with the requisite formalities in terms of the instructions dated 01.06.2016 (Annexure P-2) issued by the Board (respondent No.1). In fact prior to the said instructions, the Units of the petitioners were not within the ambit of 'Consent Management' of the Board. A further prayer has been made for directing the respondents to grant appropriate relaxation with regard to the norms; besides, to extend the time already granted to the petitioners' Units for complying with the requisite formalities so as to enable them to take 'consent to establish' and 'consent to operate' from the Board (respondent No.1) and other departments.

The Units of the petitioners are situated in the State of Haryana and are engaged in water packaging activity since the year 2005. In order to carry out the activity of water packaging, they had taken appropriate licenses from various

departments; besides, they had got themselves registered with the Central Ground Water Authority, New Delhi. The said Authority has been constituted under the Environment Protection Act, 1986. They also got their licenses regarding package of drinking water from the Bureau of Indian Standard. They also got issued Sales Tax numbers and were regularly paying taxes to the Excise and Taxation Department. They also had got licenses under the Food Safety and Standards Act, 2006. Therefore, they fulfilled the appropriate formalities and had been carrying on the above commercial activity.

The Units of the petitioners earlier to 01.06.2016 were governed by the notification dated 15.04.2014 issued by the Board (respondent No.1). The said notification provided the procedure for obtaining 'consent to establish' and 'consent to operate' under the Water (Prevention and Control of Pollution) Act, 1974 ('Water Act' – for short) and the Air (Prevention and Control of Pollution) Act, 1981 ('Air Act' – for short). In terms of the earlier notification, the Units of the petitioners were exempt from Consent Management of the Board (respondent No.1). In other words, they were not to take 'consent to establish' and 'consent to operate' from the Board, but were only required to provide pollution control devices depending upon their process and activity. However, the Board (respondent No.1) in terms of its notification dated 01.06.2016 (Annexure P-2) informed all its Regional Officers in the State of Haryana that as per modified directions of the Central Pollution Control Board, Water Packing Units including that of the petitioners come within the ambit and purview of the Consent Management Programme of the Board (respondent No.1). Directions were accordingly issued to the Regional Officers of the Board (respondent No.1) to take appropriate actions so that the Units dealing with the activity of water packing operate only after 'consent to establish' and 'consent to operate' is obtained from the Board. The petitioners' Units, therefore, are now under the ambit of Consent Management Programme of the Board (respondent No.1).

The Regional Officer of the Board (respondent No.1) in accordance with the Instructions issued to them issued show cause notices (one of them being Annexure P-3) to the Units of the petitioners under Section 33-A of the Water Act and Section 31-A of the Air Act mentioning that as per Sections 25 and 26 of the

Water Act, besides, Sections 21 and 22 of the Air Act prior consent of the Board (respondent No.1) is to be taken in order to establish and operate an industrial plant. The petitioners' Units were given fifteen days time to comply with the modified requirements for operating water packaging units. According to the petitioners, only some of their Units received the said show cause notices issued by the Regional Officers of the Board (respondent No.1).

The petitioners, in any case, were shocked to receive the show cause notices and it is only on receiving the said notices that they realized that 'consent to establish' and 'consent to operate' in order to carry out the activity of water packaging would be required to be taken from the Board. Most of the premises were run in villages and no prior Change of Land Use (CLU)/No Objection Certificate (NOC) had been taken from the District Town Planner. With the sudden change in Rules, the Units of the petitioners were left in the lurch with no place to go. Accordingly, representations (Annexure P-4 colly.) were made to the respondents as well as higher officials to intervene and extend the time for the Units of the petitioners so as to enable them to comply with all formalities in furtherance to the notification dated 01.06.2016 (Annexure P-2) so as to get necessary consent to establish and consent to operate from the Board (respondent No.1). The petitioners, it is submitted, have also formed an association i.e. Faridabad Packaging Drinking Water Welfare Association.

The Board (respondent No.1), however, without looking to the genuine problems being faced by the petitioners' Units on account of sudden change in Rules/Regulations vide notification dated 01.06.2016 according to the petitioners committed perversity in passing the impugned orders (Annexure P-5 colly.) by directing and ordering the closure of premises of the Units of the petitioners by sealing the plants and machinery; besides, disconnecting the electricity power with immediate effect.

The petitioners are thus aggrieved against the decision of the Board (respondent No.1) whereby their premises which are spread over the townships/villages of Ballabhgarh, Faridabad and Gurgaon have been sealed.

Written statement has been filed by Sh. J.P. Singh, Environmental Engineer (Headquarters) on behalf of respondent No.1.

The factual position regarding petitioners involved in business of water packaging for commercial purposes and running their Units is admitted. It is submitted that the Units of the petitioners are extracting ground water, which is natural resource, for their own benefit and such Units also generate waste water from the water purifying process. The petitioners' Units were issued show cause notices in the month of June 2016 for operating their Units without obtaining consent to operate from the Board (respondent No.1). The closure orders passed in the month of September 2016 which according to the Board (respondent No.1) showed that sufficient time had been granted to the defaulting Units to comply with the norms. However, the Units failed to obtain consent to operate, therefore, closure orders were passed under the Water Act and the Air Act. The petitioners' Units, it is submitted, are operate without consent to operate from the Board (respondent No.1) under the Water Act and the Air Act. A show cause notice, it is submitted, was issued before passing the closure order.

We have heard learned counsel for the parties and given our thoughtful consideration to the matter.

It is to be noticed that in terms of communication dated 13.10.2016 [Annexure P-4 (1)] from the Regional Officers of the Board, the Chairman of the Board recommended that the closure order issued against M/s Arun Ice Factory (petitioner No.1) may be reviewed and 90 days time may be given to the Unit for compliance of the provisions of the Water Act and the Air Act and if the Unit failed to comply with the conditions as mentioned in the said communication within due time, the closure order already issued would be implemented. The conditions that have been mentioned are that:-

1. The Unit will obtain CLU if operated in non-industrial area or will shift to the Industrial area within the time given.
2. The Unit will install adequate pollution control equipments to treat the RO Reject Water.
3. The Unit will comply all the provisions of Water Act and Air Act as application.
4. The Unit will apply for CTE/CTO within due time with complete required documents.

It is submitted that in view of the present petition being filed, the Units of the petitioners have been closed on 17.12.2016. Besides, the respondents had not even constituted an Appellate Authority under the Air Act and the Water Act so as to enable the aggrieved petitioners to file an appeal against the orders of the Board (respondent No.1), which is their statutory right.

Learned State Counsel has placed on record three orders dated 14.4.2017 passed in terms of Section 28 (1) (2) of the Water Act and Section 31 (1) (2) of the Air Act as also sub Rule 19 of Bio Medical (Waster Management & Handling), Rules, 1998 whereby Appellate Authorities have been constituted and Members have been appointed.

In view of the above, the petitioners may, if so advised, approach the Appellate Authority for redressal of their grievances in accordance with law.

The writ petition stands disposed of accordingly.

However, the stay that was granted by this Court on 19.12.2016 shall remain in operation and shall continue for a period of two weeks from the date of issue of the certified copy of the order so as to enable the petitioners to approach the Appellate Authority.

(S.S. Saron)
Judge

(Darshan Singh)
Judge

17.4.2017
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Note:

1. Whether the order is speaking/reasoned: Yes.
2. Whether the order is reportable : No.