IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6063 of 2017
Date of decision: 17.4.2017

M/s Shree Shyam Enterprises

…. Petitioner

Versus

Haryana State Pollution Control Board & anr.

…. Respondents

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

Present: Mr. Manvender Chauhan, Advocate for the petitioner.

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

Mr. Randhir Singh, Advocate for the respondents – Haryana State Pollution Control Board.

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S.S. Saron, J.

The petitioner by way of the present petition under Articles 226/227 of the Constitution of India seeks quashing of the order dated 03.03.2017 (Annexure P-6) passed by the Haryana State Pollution Control Board, Panchkula ('Board' - for short) (respondent No.1) whereby, it is alleged that the Board has illegally and arbitrarily ordered the sealing of the premises of the petitioner's Unit.

The petitioner alleges that its Unit, which is situated at Kanheli Road, Near Shaheed Bhagat Singh School, District Rohtak is engaged in water packaging. The said Unit has been sealed by the Board (respondent No.1) without providing any opportunity of hearing or granting any time to the Unit to comply with the requisite formalities as per instructions dated 01.06.2016 (Annexure P-5) issued by the Board.

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A direction, therefore, it is submitted, is liable to be issued to the Board (respondent No.1) to grant appropriate relaxation with regard to the norms; besides, grant time to the Unit of the petitioner for completing its requisite formality in order to take consent to establish as well as consent to operate from the Board (respondent No.1).

A perusal of the order instructions dated 01.06.2016 (Annexure P-5), shows that these relates to covering of Water Packaging Units under Consent Management. It has been intimated that the Central Pollution Control Board had issued notified directions under Section 18 (1) (b) of 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) regarding Harmonization of Classification of Industrial Sectors under Red/Orange/Green/White Categories vide letter dated 07.03.2016, which had been, in principle, adopted by the Board (respondent No.1) for the purpose of Consent Management.

It is further mentioned that as per the revised categorization the industries manufacturing distilled water (without boiler) with electricity as source of heat (Sr. No.51) and mineralized water (RO rejects) (Sr. No.54) had been categorized under Green category, for which consent was now required from the Board (respondent No.1). The details of different categories of projects/industries relating to Water Packaging Units as per previous notification of the Board (respondent No.1) issued on 15.04.2014 were given. All the regional officers in the field were requested to process the manufacturing activities of all individual Units as mentioned therein and take appropriate action accordingly regarding coverage under Consent Management, based upon their process, products and activities as per consent policy notification dated 15.04.2014 of the Board and revised categorization of the Units

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issued by the Central Pollution Control Board vide letter dated 07.03.2016 as had been mentioned therein and detailed list of water packaging units covered under the Consent Management accordingly, along with action taken against the Unit, be also supplied to Head Office immediately to cover the water packaging units under the Consent Management and take further necessary action.

The Board vide its impugned order dated 03.03.2017 has in exercise of powers conferred under Section 33-A of the Water Act and Section 31-A of the Air Act ordered to close down the operation of the petitioner's Unit by sealing its plant and machinery along with the diesel generator (DG) set with immediate effect. It was observed that the Regional Officer of the Board at Bahadurgarh vide letter dated 03.02.2017 had intimated that the Unit of the petitioner was in operation without having CTE and CTO from the Board (respondent No.1) and without installation of Effluent Treatment Plant.

It is not in dispute that the petitioner against the said order dated 03.03.2017 (Annexure P-6), has an effective alternative remedy of filing an appeal before the Appellate Authority. However, the appeal was not filed as no Appellate Authority was functioning. Therefore, he filed this present petition and this Court on 23.03.2017 issued notice of motion for today and in the meanwhile, operation of the impugned order dated 03.03.2017 (Annexure P-6) was stayed.

Learned State Counsel today has placed on record three orders dated 14.4.2017 passed in terms of Section 28 (1) (2) of the Water Act, 1974 and Section 31 (1) (2) of the Air Act, 1981 as also sub Rule 19 of Bio Medical (Waster Management & Handling), Rules, 1998 whereby Appellate Authorities have been constituted and Members have been appointed.

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In view of the above, the petitioner may, if so advised, in the first instance, approach the Appellate Authorities by filing an appeal in accordance with law assailing the impugned action of the Board (respondent No.1).

Accordingly, the writ petition stands disposed of by giving liberty to the petitioner to approach the Appellate Authority against the impugned order dated 03.03.2017 (Annexure P-6), in the first instance.

The stay that has been granted by this Court on 23.03.2017 shall continue in operation for a period of two weeks from the date of issue of the certified copy of the order.

(S.S. Saron)
Judge

(Darshan Singh)
Judge

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Note:

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

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