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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 10.03.2017

+ **W.P.(C) 2154/2017**

M/S SAPPHIRE FOODS INDIA PRIVATE LIMITED..... Petitioner

versus

THE SECRETARY, DELHI POLLUTION CONTROL
COMMITTEE AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner :

Mr Abhay Kumar.

For the Respondents:

Mr Sanjeev Rali and Mr Prabhav Ralli for R-1.

Mr Mukesh Gupta, Mr Chetan Gautam and Mr Pranay Jain for
R-2.

Mr Sangram Singh for R-3.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

10.03.2017

SANJEEV SACHDEVA, J. (ORAL)

W.P.(C) 9367/2017(exemption)

Allowed, subject to all just exceptions.

W.P.(C) 2154/2017 & CM No.9368/2017(stay)

1. The petitioner impugns order dated 13.02.2017, whereby the respondent No.1 – Delhi Pollution Control Committee has directed the petitioner to close down the Unit with immediate effect. The concerned authority, i.e., the New Delhi Municipal Council (NDMC)

has been directed to disconnect the electricity and water supply to the petitioner with immediate effect.

2. The said order has been passed under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '*the Water Act*') and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '*the Air Act*') on the premise that the mandatory provisions of Section 21 of the Air Act as well as Section 25/26 of the Water Act have not been complied with.

3. Section 25(1) of the Water Act read as under:-

25. Restrictions on new outlets and new discharges

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

PROVIDED that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water

(Prevention and Control of Pollution) Amendment Act, 1988, 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.

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4. Section 21(1) of the Air Act read as under:-

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 section 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.]

5. In terms of Section 21(1) of the Air Act, no person, without the previous consent of the State Board, is to establish or operate an industrial plant in an air pollution control area.

6. 'Industrial Plant' has been defined under Section 2(k) of the Air Act to mean any plant used for any industrial or trade purposes

and emitting any air pollutant into the atmosphere.

7. Under Section 25 of the Water Act, no person, without the previous consent of the State Board, can establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land.

8. The petitioner, in the present case, has set up a Restaurant under the name and style of '*KFC Sapphire Foods India Private Limited*'.

9. Admittedly, the petitioner has not applied for permission in terms of Section 21 (1) of the Air Act and Section 25 (1) of the Water Act.

10. On 07.03.2017, when the petition was listed, the categorical stand of the petitioner was that the petitioner has complied with the requirements of the Water Act as well as of the Air Act, but had not made an application seeking prior permission to open the Restaurant.

11. It is contended that an application was made on 04.03.2017 seeking permission under the said Acts.

12. This Court, noticing the contention of the petitioner that all compliances have been made, directed the respondent – Delhi Pollution Control Committee (DPCC) to carry out an inspection and submit a report.

13. Inspection has been carried out on 08.03.2017 and a report is handed over in the Court. The same is taken on record.

14. The Inspection report notices that there is a seating capacity of 109 persons in the Restaurant. The Effluent Treatment Plant (ETP) was found installed but in defunct condition. It was also observed that chemicals required for treatment were not found available in the premises. The Restaurant was found operational. It was also found that there was a bypass arrangement installed in the ETP. The bypass arrangement, it is submitted, would enable the operator of the ETP to bypass the system of the effluent treatment and divert the sludge/waste water directly into the sewage system without any treatment. Certain photographs have also been produced and filed in the Court showing the condition of the ETP.

15. Learned counsel appearing on behalf of the DPCC also points out that the application made by the petitioner on 04.03.2017 for grant of permission is also defective and states incorrect facts with regard to the water consumption and the effluent.

16. It is pointed out that in the application, water consumption for all different uses in the restaurant has been shown to be only 10 litres per day. The source of water supply has been shown to be 15 litres a day. The quantity of waste effluent generated, as claimed in the application, in terms of litres per day, has been shown as 15 litres per day. In the type of treatment plant in the column for trade effluent, it

has been stated, that ETP (Physiochemical) capacity is only 2 litres a day and ETP (Biological) capacity has been shown as again 2 litres a day. With regard to disposal of treated effluents, the total quantity shown is 8 litres a day.

17. Learned counsel for the respondent points out that for a Restaurant having been sitting capacity of 109, the figures are clearly incorrect. He submits that as per the standard calculation, the estimated water consumption would be roughly over 7,000 litres per day against 10 per day shown. This would also entail generation of a substantial amount of effluent. Which has not been correctly shown in the application made on 04.03.2017.

18. Learned counsel for the petitioner submits that if there are any deficiencies, the petitioner may be granted some time to rectify the same.

19. Reliance is placed by learned counsel for the petitioner on a decision of a Coordinate Bench in **Splendor Landbase Limited versus Delhi Pollution Control Committee**, 173(2010) DLT 53. Learned counsel has referred to and relied on paragraph 29(vi) to contend that when buildings in question have already been constructed, without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with and the DPCC should invoke powers under Section

25(5) of the Water Act and issue show cause notices prior to taking any action.

20. In my view, the said judgment would not be applicable to the facts of the present case. In **Splendor Landbase Limited** (Supra), 38 Writ Petitions had been filed by various builders. The Court was concerned with some of the properties comprising of Residential Housing Complexes, Commercial Shopping Complexes and Shopping Malls, some of which had built up area of over 20,000 square metres. The question in the said petition was whether the activity of construction of Commercial Shopping Complexes, Shopping Malls and Residential Complexes was covered under the Air Act and the Water Act.

21. In the present case, there is no such issue about the applicability of the Air and Water Act. It is admitted position that both Air and Water Act are applicable. The petitioner has admittedly set up a Restaurant without prior permission.

22. Learned counsel for the petitioner further relies on the decision of the Supreme Court in **Velore Citizens Welfare Forum versus Union of India & Others**, (1996) (6) Scale 194 and contends that even in case of pollution, time should be granted before taking any action. He contends that in the said case even where Supreme Court found that the tanneries were polluting the in the State of Tamil Nadu, the Supreme Court granted further time to the tanneries to install

necessary pollution control devices. Likewise he submits that time should be granted to the petitioner to make compliances before closing the Restaurant.

23. Learned counsel for the petitioner has been repeatedly asked as to what is the principle of law laid down by the Supreme Court in **Velore Citizens Welfare Forum** (*supra*), which the petitioner relies upon. Learned counsel has been unable to point out the same except to contend that even in cases of pollution, some time has to be granted to the polluting units to rectify the situation.

24. In my view, the Supreme Court in **Velore Citizens Welfare Forum** (*supra*) does not lay down as a principle of law that every polluting unit has to be granted time to rectify the situation before any action is taken.

25. In **Velore Citizens Welfare Forum** (*supra*), the Supreme Court has held that the salient principles of sustainable development, *inter alia*, includes use and conservation of natural resources, environmental protection, the precautionary principle, Polluter Pays principle, obligation to assist and cooperate etc. The Supreme Court has held that the precautionary principle and the Polluter Pays principle are sustainable developers.

26. The Supreme Court in **Velore Citizens Welfare Forum** (*supra*) noticed another decision of the Supreme Court in **Indian Council for Enviro-Legal Action Etc. versus Union of India & Others**, J.T. 1996

(2) SC 196, wherein the Supreme Court held that once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.

27. The Supreme Court in **Velore Citizens Welfare Forum** (*supra*) thereafter held that the polluting industries are “Absolutely liable to compensate for the harm caused by them to villagers in the affected areas”. They are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas. “The Polluter Pays Principle” was held to mean that there was absolute liability for harm to the environment and it extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is the part of the process of “Sustainable Development” and the polluter is liable to pay the cost to the individual suffers as well as the cost of reversing the damaged ecology. The Judgment in **Velore Citizens Welfare Forum** (*supra*), in my view, does not further the case of the petitioner.

28. I may also point out that when I had passed the order on 07.03.2017, directing respondents to carry out an inspection, I was even inclined to indulge the petitioner in ignoring the fact that the petitioner had made the restaurant operational without taking prior approvals. This I was inclined because the petitioner had contended that the petitioner had complied with the condition of grant of

permission and had submitted that it had made all the necessary compliances under the Air and the Water Act.

29. The inspection carried out, on 08.03.2017, pursuant to my order dated 07.03.2017, shows to the contrary. The petitioner has not made any compliances rather the petitioner has tried to circumvent the provisions of the Water Act by installing a bypass system to the ETP. Clearly, the petitioner is not a person, who can be granted any indulgence.

30. The admitted position is that the petitioner had not made the necessary compliances under the Air and the Water Act on the date when the last inspection was carried out on 08.03.2017.

31. Learned counsel for the petitioner has handed over a reply dated 09.03.2017 submitted to the Respondents - DPCC, in response to the inspection report dated 08.03.2017, to contend that all compliances have been made and a request has been made to re-inspect the premises.

32. In my view, since the petitioner admittedly was not a compliant on 07.03.2017, when a statement was made that the petitioner is compliant, which is fortified by the inspection report dated 08.03.2017, no further indulgence can be shown to the petitioner by this court.

33. The petitioner has already made an application to respondents

on 09.03.2017 to contend that compliances have been made. The respondents are free to deal with the same in accordance with law.

34. In my view, I find no infirmity in the impugned order dated 13.02.2017 directing the petitioner to close down the Unit with immediate effect and directing the concerned authority, i.e., the New Delhi Municipal Council (NDMC) to disconnect the electricity and water supply to the petitioner with immediate effect.

35. The Writ Petition is accordingly dismissed. The appropriate authorities are at liberty to take action in accordance with law.

36. It is however, clarified that the dismissal of this petition would not come in the way of the petitioner making an application, in accordance with the provisions of the Air Act and the Water Act for grant of requisite permissions for running a restaurant, after the necessary compliances have been made. Any application so made would be liable to be considered in accordance with law.

37. *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

March 10, 2017

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