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

+ LPA 444/2016

Judgment pronounced on 20th January, 2017

KRISHNA CONTINENTAL LTD

.....Appellant

Through : Ms. Jyotika Kalra with Mr. Hamant Kumar
Yadav, Advocates.

Versus

DELHI POLLUTION CONTROL COMMITTEE & ORS.

.....Respondents

Through : Mr. Sanjeev Ralli, Advocate for DPCC with
Ms. Shiva Lakshmi, CGSC, Mr. Vinod
Tiwari, GP for respondent No. 2/UOI.
Mr. Alok Kumar & Mr. Abhishek Paruthi,
Advocates for respondent No.3/CPCB.

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HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The unsuccessful petitioner in W.P. (C) No. 5114/2016 is the appellant before us.
2. The learned Single Judge dismissed the writ petition by the order under appeal dated 02.06.2016 holding as under:

"... This Court also finds that there is no prayer in the writ petition to strike down the revised fee schedule. Consequently, no relief with regard to the fee schedule can be granted to the petitioner.

13. At this stage, learned counsel for the petitioner wishes to amend the writ petition. However, this Court is of the opinion that the present writ petition is liable to be dismissed on another ground also inasmuch as the petitioner has not approached this Court with clean hands as it had been polluting the city for the last twenty years i.e. from 1993 to 2013. During this period, neither a "consent to establish" nor a "consent to operate" had been obtained by the petitioner.

14. To say that the lapse on the part of the petitioner was an innocent non-compliance is to trivialise a statutory provision which has a direct and vital impact on the life of the citizens of this city. Since a very important and salutary provision of the environmental law has not been complied with by the petitioner for nearly twenty years, this Court is of the view that the petitioner's writ petition cannot be entertained by this Court in exercise of equitable jurisdiction under Article 226 of the Constitution.

15. Accordingly, the present writ petition is dismissed."

3. We have heard the learned counsel for both the parties and perused the material available on record.

4. It was contended by Ms. Jyotika Kalra, counsel for the appellant that the respondent had illegally and unjustifiably enriched itself to the tune of Rs. 39,54,900/- by adopting the fee structure as per the DPCC Board Meeting dated 09.12.2009 replacing the earlier fee structure of Rs. 2300/- per annum with Consent to Establish fee of Rs. 2,00,000/- per annum retrospectively. It was further contended that the appellant under imminent threat of its closure and being under coercion, undue influence and misrepresentation deposited Rs.41 lakhs on 19.08.2013 under protest and is

now insisting on refund of Rs. 39,54,900/-. It was urged that the non compliance of statutory provisions was an inadvertent omission and further contended that the Show Cause Notice under Water Act and Air Act was issued for the first time after a lapse of twenty years.

5. To substantiate the arguments of the appellant learned counsel relied upon the judgment of this court of ***Delhi Pollution Control Committee and ors vs Splendor Landbase Ltd and Ors*** reported in ***2012 LawSuit (Del) 129*** and ***Mafatlal Industries Ltd. & Ors. Vs UOI & Ors*** reported in ***1997 5 SCC 536***.

6. Per Contra, Mr. Sanjeev Ralli learned counsel for the respondent contended that as per the inspection by DPCC officials on 05.04.2013 it was observed that no consent was obtained and there has been a serious default on the part of the appellant company as they have been responsible for discharging effluents which is ultimately flowing into the stream or well or sewer or on land. Counsel further contended that the payment to be made by the appellant is a result of condonation fee and not the result of imposition of any penalty and thus the judgment relied upon by the counsel for the appellant was not applicable.

7. In the case before us, the prayer made by the appellant is for the refund of the money alleged to have been paid under protest without challenging the statutory provision. From the perusal of the facts and circumstances of the case, we are of the considered view that though High Court has power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution such a petition solely

praying for the issue of a writ directing the respondent to refund the money is not ordinarily maintainable specifically when the validity of the fee structure is not challenged and refund of the money as the consequential relief is not claimed therein.

8. However, assuming for the sake of arguments that the appellant herein had submitted before the Learned Single Judge that he would amend the writ petition, scrutiny of the record shows that the appellant is a company running a hotel since 1993 and as per the policy of DPCC the activity of the said unit falls under the 'Orange Category'. As per the consent policy as finalized in meeting dated 09.01.2007 'Consent to establish' or 'Consent to operate' an Industrial plant in Delhi was the first step for any industry/trade (this included any activity involving manufacturing process and /or emitting pollution, by way of water pollution, Air and Noise pollution). Any unit that applied for 'consent to operate' without first obtaining 'consent to establish' was required to pay condonation fee for the entire period of its existence subject to a maximum from the year 1991 i.e since the inception of Delhi Pollution Control Committee. By way of earlier fee structure the appellant was required to pay Rs.2300/- annual consent fee for both Air act and Water act. Coming to the new fee structure for obtaining consent fee as per the Delhi Pollution Control Committee Board meeting dated 09.12.2009 fee for 'Consent to establish' for Orange category was Rs.1,00,000/- and fee for 'Consent to Operate' per year for Orange category was Rs. 2,00,000/-. Perusal of the show cause notice dated 30.04.2013 showed that the appellant company was operating the unit without obtaining consent from DPCC since

their establishment and as per the submission of the respondent the appellant company had been polluting the city for the last twenty years from 1993.

9. We find no force in the argument of the appellant that the non compliance of the statutory provision was an inadvertent omission and further that the respondent themselves for the first time in exercise of their powers under the Water Act and Air Act served the show cause notice after a lapse of twenty years. Violating the mandatory provisions in the aforesaid Acts which disallowed any person without previous consent of the DPCC to establish an industrial unit , operation or process which is likely to cause water or air pollution, the appellant company was established and was operating their unit and engaged in the activity of Hotel thereby causing pollution. The non compliance of consent as per statutory provision cannot be termed as an innocent non compliance, rather it is a wilful non compliance of the provisions and the appellant cannot take shelter by submitting ignorance or inadvertent omission of the mandatory statutory provision.

10. As far as contention of the appellant that imposition of penalty in the form of condonation fee for obtaining the prior consent to establish and operate is unconstitutional is concerned, we do not find any force in the argument as the appellant has not challenged the validity of consent policy before any of the Court.

11. The judgment relied upon the counsel for the appellant i.e ***Delhi Pollution Control Committee and ors vs Splendor Landbase Ltd and Ors*** reported in ***2012 LawSuit (Del) 129*** and ***Mafatlal Industries Ltd. & Ors. Vs***

UOI & Ors reported in ***1997 5 SCC 536*** is not applicable to the present case at hand as the aforementioned case does not involve any question of fee structure rather it is relating levying of penalties by way of fine or imprisonment.

12. Having heard the learned counsel for the parties, we do not find any justifiable reason to interfere with the order under appeal and accordingly, the appeal is dismissed.

SANGITA DHINGRA SEHGAL, J.

CHIEF JUSTICE

JANUARY 20, 2017
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