

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12422 of 2013

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M/S Hanuman Stone Works, Jamuhar, P.O. Jamuhar, P.S. Sasaram, District - Rohtas At Sasaram Through Prakash Ranjan Son Of Ramesh Prasad Singh, Power Of Attorney Holder Resident Of Village - Sohwalia Khurd, P.O. Bisodehri, P.S. Kargahar, District - Rohtas At Sasaram

.... Petitioner

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary, Department Of Mines, Government Of Bihar, Patna
3. The Director Of Mines, Department Of Mines, Government Of Bihar, Patna
4. The District Magistrate, Rohtas At Sasaram, District - Rohtas At Sasaram
5. The Assistant Director, Mine and Geology, Rohtas At Sasaram, District - Rohtas At Sasaram
6. The Bihar State Pollution Board, Patna Through The Secretary
7. The Secretary, the Bihar State Pollution Board, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. S.B.K.Manglam, Adv.
Mr. Ravi Ranjan, Adv.

For the Pollution Control Board: Mr. Shivendra Kishore, Sr.Adv.
Ms. Binita Singh, Adv.

For the Mines and Geology : Mr. Naresh Dikshit, Adv.
Mr. Lalan Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-01-2018

Heard learned counsel for the parties.

The writ petition was filed seeking a writ in the nature of mandamus commanding the respondents- 2nd set i.e. the authorities of the Bihar State Pollution Control Board to produce the order bearing No. 14061 dated 16.8.2012, whereby the grant of No Objection Certificate has been refused for running the Crusher Plant and on its production be quashed by issuance of a writ of Certiorari. The petitioner also seeks a direction in the nature of mandamus to direct



the respondent authorities to produce on record letter No. 20 dated 8.1.2013, whereby his stockist licence has been cancelled. The petitioner makes a third prayer for quashing the order dated 13.4.2013 of respondent no.5, Assistant Director, Mines and Geology, Rohtas at Sasaram as communicated vide letter no. 261 dated 12.4.2013, whereby the petitioner has been directed to stop operation of his crusher plant on grounds that his stockist licence has been cancelled. The petitioner alongside makes a prayer to command the respondents not to disturb him in running of his stone crusher plant.

Two sets of counter affidavits have been filed responding to the issues raised in the writ petition. The counter affidavit on behalf of the respondent State in its Mining Department informs that the stockist licence was cancelled under Rule 7(1)(g)(iii) of the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003 (hereinafter referred to as 'the Rules') and the grounds for the same is discussed in paragraph 5 in which it is stated that the Bihar State Pollution Control Board has since cancelled the 'No Objection Certificate' issued by the Board for operating the crusher plant, which is a condition precedent for the stockist licence. In other words, the cancellation of stockist licence by the Mining Department is dependent on the order of the respondent Pollution Control Board in cancelling the 'No Objection Certificate' for running the same.



The position has been explained by the Board in the supplementary counter affidavit so filed on their behalf and paragraphs 4 to 7 of the said affidavit is a complete answer to the issue in hand. It is explained that the petitioner had obtained a 'consent to establish' under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'the Air Act') in the year 2007 and whereafter the petitioner also applied for consent to operate from the Board on 18.12.2007 which was granted vide No. T-13563 dated 8.12.2008 (which has been incorrectly mentioned as 8.12.2012 in the counter affidavit). It is mentioned that the said 'consent to operate' order expired on 31.12.2008 and whereafter the petitioner applied for the same on 17.11.2008, 15.4.2010, 4.2.2011 and 17.2.2012. The Board while considering the application on 17.11.2008 vide letter No. T-4614 dated 12.5.2009 and letter No. T-13923 dated 27.11.2009 required the petitioner to submit compliance report of the conditions present in the earlier 'consent to operate' order but the petitioner failed to respond to the letters. It is thereafter mentioned that the notice of show cause was given to the petitioner under section 21(4) of 'the Air Act') on 1.4.2010 and again on 14.5.2010 but it was not responded. The petitioner without satisfying on the statutory compliance kept on applying unilaterally. It is, thus, clarified that since after grant of 'consent to establish', the



petitioner obtained 'consent to operate' order from the Board only for the year 2008 and whereafter there is no order from the Board giving permission to the petitioner to operate his crushing plant.

Although Mr. S.B.K.Manglam, learned counsel appearing for the petitioner, very expressively argued that no show cause notice was issued to the petitioner before such steps were taken, but in my opinion where the 'consent to operate' order is a fixed time order, it is the responsibility of the licensee to obtain its renewal and a unilateral application by the applicant does not serve this purpose. Mr. Manglam has referred to the 'consent to establish' order present at Annexure 9 to the writ petition to submit that before its cancellation the petitioner needed a notice but a bare perusal of the 'consent to establish' order issued under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of 'the Air Act' would confirm its validity for six months only from the date of issue and within which time, the unit is required to obtain a 'consent to operate' order as would manifest from the order present at Annexure 9. It is not in dispute that following the 'consent to establish' order issued by the Board, the petitioner did obtain a 'consent to operate' order under section 21 of 'the Air Act' on 18.12.2007 which was issued on 8.12.2008 but it had a validity only until 31.12.2008. The undisputed position is that since thereafter the petitioner has never bothered to



obtain 'consent to operate' order from the Board. Meaning thereby, he has been operating his crusher plant without obtaining permission from the Board to run his crusher plant and despite this position, the petitioner has been able to run his plant since after 2008 until the authorities of the Mining Department realized that the plant was being operated without obtaining statutory sanction from the authorities of the Pollution Control Board and which has led to the order dated 13.4.2013 issued by the Assistant Director, Mines and Geology directing the petitioner to stop his mining operation. It is again undisputed that obtaining a statutory permission from the Pollution Control Board is a condition precedent for operating a crusher plant and since undisputedly the petitioner does not have the 'consent to operate' order from the Pollution Control Board, no infirmity can be found either in the action of the Pollution Control Board in not issuing a 'consent to operate' order to the petitioner under the enactments in question or in the order of the Assistant Director impugned at Annexure 7, whereby the petitioner has been directed to stop operation of crusher plant forthwith, requiring any interference.

It is for the petitioner to obtain statutory permission from the authorities of the Pollution Control Board before he can approach the Mining Department for a reconsideration of the matter but until such time the petitioner is not entitled to any indulgence.



The writ petition is disposed of.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.02.2018
Transmission Date	NA

