

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.29759 OF 2018

ORDER (ORAL): *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.Eranki Phani Kumar for petitioner and the learned Government Pleaders for Industries and Revenue for respondents.

2. The petitioner challenges Order No.MDK-209/TSPCB/UH-II/2018 dated 16.08.2018 of the 2nd respondent rejecting representation dated 26.07.2018 made requesting restoration of power supply for limited purposes, as illegal and contrary to the directions issued by this Court in W.P (PIL) No.165 of 2018.

3. The genesis for Closure Order No.MDK-209/TSPCB/UH-II/2018-1587 dated 17.07.2018 issued by 2nd respondent can be traced to W.P (PIL) No.165 of 2018 filed by one SRamachandra Reddy against the petitioner herein. W.P (PIL) No.165 of 2018 was filed complaining inaction of respondents therein, particularly respondent Nos.2 to 4 in considering and disposing of representations filed by SRamachandra Reddy against the alleged violation of Environmental Laws by M/s Giridhari Explosives Private Limited (petitioner herein).

4. On 17.07.2018, TSPCB/2nd respondent issued closure orders under Section 33-A of the Water (Prevention and Control of Pollution) Act and Section 31-A of the Air Prevention and Control of

Pollution) Act, 1981. On 18.07.2018, W.P (PIL).No.165 of 2018 was disposed of and the operative portion of the order reads thus:

“Under the aforementioned facts and circumstances, recording the fact-situation obtained as on today, to the effect that the establishment is closed down and is covered by the closure orders issued by respondent Nos.2 and 3 as well as respondent No.4 - Pollution Control Board, we order this writ petition directing that the said situation shall continue until respondent No.5 satisfies the competent authorities among the respondents that it is entitled to commence operations in the establishment, after rectification of the deficits. We also record the submission on behalf of respondent No.5 that it maintains a green belt and has also cattle and other beings in the premises which are unconnected with the industrial activity. It is up to respondent No.5 to seek requisite orders from respondent No.2 - District Collector for permission to deal with all such situations, either by removing them from the premises or otherwise. It will be open for the District Collector to consider any such request of respondent No.5. The District Collector shall render a decision on any such request of respondent No.5 without delay, having regard to the fact that the submission is to the effect that the cattle and other living beings are involved, as also the need to maintain the green belt”.

5. The closure order dated 17.07.2018 refers to a few deficiencies either in adhering to the conditions imposed by 2nd respondent or disregard to the standards stipulated by the consent for operation issued by 2nd respondent. It is in this background the petitioner through representation dated 26.07.2018 requested 2nd respondent/Board for restoration of power supply for the limited purpose of using electricity in servant quarters, cattle sheds etc. The petitioner requested to remove the seizure effected

by 3rd respondent. The 2nd respondent refused the said request for the following reasons:

- i. The industry shall approach the District Collector to furnish a report to the Board on the measures taken by the industry to rectify the non compliances, assessment of District Collector on the damages caused by operation of the unit to the surrounding areas through Revenue & Engineering Departments.
- ii. The industry may approach the Board for restoration of power supply only after the receipt of the report from the District Collector.

Hence, the writ petition.

6. The other grounds and details urged by the learned counsel appearing for parties are not adverted to in this order for the view we are proposing to take while disposing of this writ petition.

7. W.P (PIL) No.165 of 2018 was disposed of taking note of the action taken on the representations filed by the petitioner therein. The petitioner industry was closed for non-compliance with a few conditions imposed by the Board. It is not a case of permanent shutting down of operations by petitioner industry, which is in existence for nearly two decades. The 2nd respondent does not as well intend permanent closure of petitioner industry. The petitioner industry through representations now wants removing seizure effected by 3rd respondent and restoration of power supply for limited purpose. The petitioner stated across the Bar that it is prepared to undertake its activities by strictly conforming to the requirements of Environmental Laws.

8. In this background, we are of the view that the understanding of the order of this Court dated 18.07.2018 in W.P (PIL) No.165 of 2018 and rejecting the request for restoration of power supply appears to be erroneous. The respondents ought not to subject the petitioner to play the game of see saw while removing seizure or restoring power supply by calling upon the petitioner to first get seizure lifted or power restored.

9. Keeping in view the nature of allegations against the petitioner and the precautionary and sustainable development principles, the writ petition is ordered with the consent of the counsel as follows:

- (a) the order impugned in the writ petition is set aside;
- (b) the petitioner is given liberty to represent to 2nd and 3rd respondents by enclosing a copy of this order within one week from today for restoration of power supply for domestic and ancillary purposes and also remove the seizure effected;
- (c) the 2nd and 3rd respondents are directed to pass orders on the representation of petitioner, both for restoration of power supply and removing the seizure effected on the premises of petitioner within two weeks from today;
- (d) the petitioner is directed to submit a comprehensive study report on the process the petitioner industry undertakes in R.S.Nos.107, 109, 110 & 111 of Chilemamdi Village, R.S.Nos.44, 47 & 49 of Chilakapalli Village, Jharasangam Mandal and also the steps the petitioner industry proposes to take for containment of impact of noise and vibration from its activities; and
- (e) the 2nd respondent constitutes a technical committee, gets the report examined by the committee and if the

report of petitioner industry is satisfactory, passes temporary revocation orders, thereafter gathers further report on the functionality of the measures put in place by the petitioner and passes final orders under Section 33-A of the Water (Prevention and Control of Pollution) Act and Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 as are deemed fit.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

27th August, 2018

Note:

Issue CC forthwith
B/o Lrkm

