

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1956 of 2016

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Arun Singh Son of Sri Ganesh Singh, Resident of Village- Awari, Police Station- Marhowrah, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Bihar State Pollution Control Board, BELTRON Bhawan, Shastri Nagar, Patna through its Member Secretary
3. The Member Secretary, Bihar State Pollution Control Board, BELTRON Bhawan, Shastri Nagar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Adv. Mr. Ahsas Manikant, Adv.
For the Respondent No. 2 & 3 :		Mr. Shivendra Kishore, Sr. Adv. Mr. Parijat Saurav, Adv.
For the State	:	Ms. Ratna Kumari, AC to PAAG2

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 25-02-2019

Heard learned counsel for petitioner and the State.

The petitioner is aggrieved by order as contained in Annexure-7 which is letter bearing no. T. 3605 dated 19.3.2015 issued under signature of Member-Secretary, the Bihar State Pollution Control Board, Patna whereby the consent to Establish (NOC) the Brick Kiln plant of the petitioner as granted vide letter T. 2056 dated 25.2.2011 has been cancelled and application for Emission consent order dated 8.1.2015 has been rejected and further a direction was issued for closer of the Brick Kiln plant with immediate effect.

Learned counsel for the petitioner has submitted that



aforesaid order as contained in Annexure-7 has been passed without following the principle of Natural justice. No notice was ever issued and served to him. It is further submitted that without affording opportunity of proper hearing, the order has been passed. In support of his submission, learned counsel for petitioner has relied upon judgment of Hon'ble Supreme Court since reported in **(1998)8 SCC 1 (Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Others)**, wherein, it has been held that alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic Whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

Learned counsel for the petitioner has further submitted that in the instant case, proper notice was sent to the petitioner.



In the counter affidavit, he has enclosed the copy of the dispatch register to show that notice was issued to the petitioner by registered post. He further submits that after passing of the order as contained in Annexure-7, the petitioner has filed fresh petition before the authority as contained in Annexure-10 dated 26.5.2015 and the authority concerned after considering the subsequent application, has passed the order vide memo no. T-2932 dated 17.3.2016 as contained in Annexure- D to the counter affidavit.

Learned counsel for the State submits that now the petitioner has efficacious alternative remedy to file appeal against the aforesaid orders under provision of Section 31 of the Air (Prevention and Control of Pollution) Act, 1981.

Learned counsel for petitioner submits that subsequent order passed by the authority vide Annexure- D has reiterated the reason earlier given by the authority in the order as contained in Annexure-7. He further submits that unless the order passed vide Annexure-7 is set aside he will not be able to get any relief by the Appellate Authority.

This Court feels that Appellate Authority is competent to hear the appeal against both the orders as contained in Annexure-7 as well as Annexure-D to the counter affidavit. The



order contained in Annexure D has been passed only after taking into consideration the earlier order passed by the Authority as contained in Annexure-7.

Accordingly, this writ petition is disposed off with direction to the petitioner to file appeal before the competent authority under provision of Section 31 of the Air (Prevention and control of Pollution) Act, 1981 challenging the order(s) as contained in Annexure-7 of the writ petition and Annexure- D to the counter affidavit, within a period of one month from the date of this order. The competent appellate authority, after affording opportunity of hearing to the petitioner and looking into all the relevant documents filed on his behalf will pass appropriate order in accordance with law within a period of three months from the date of filing of such appeal by the petitioner.

It is made clear that limitation in filing the appeal will be condoned by the Appellate Authority because the petitioner was seeking remedy in this Court by filing the writ petition.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	
CAV DATE	
Uploading Date	2.3.2019
Transmission Date	

