

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8652 of 2016

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Maa Bhagwati Atta Oil Mill through its Proprietor Sri Ajit Kumar Gupta @
Ajit Kumar, son of late Mohan Gupta, resident of Naubatpur, Pethia Bazar,
Ward No.6, P.S.- Naubatpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Patna.
3. The Sub Divisional Officer, Patna.
4. The Officer-in-charge of Police Station Naubatpur in the district of Patna.
5. The Chairman, Bihar State Pollution Control Board, Beltron Bhawan,
Shashtri Nagar, Patna- 800023.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Sharma, Advocate.
For the Bihar State	:	Mr. Shivendra Kishore, Sr. Advocate.
Pollution Control Board	:	Mr. Parijat Saurav, Advocate.
For the State	:	Mr. Awanish Nandan Sinha, Advocate. Mr. Jay Prakash Sharma, A.C. to GP-21

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 18-04-2019

1. This writ application has been filed for necessary direction for quashing the order dated 17.11.2014 passed by the Chairman, Bihar State Pollution Control Board, whereby the industrial plant of the petitioner has been ordered to be close down under Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981, as contained in Annexure-1 to the writ petition. Petitioner also sought relief for issuance of 'No Objection Certificate' in favour of petitioner's Mill by the Respondent No. 5 in the light of application along with Demand Draft filed by the petitioner on 8.12.2014.



2. Counsel for the petitioner submits that the Chairman, Bihar State Pollution Control Board, Patna, has passed ex-parte order on 17.11.2014 without giving proper opportunity to the petitioner. He further submits that Mill of the petitioner has been closed on the basis of complaint made by Rajendra Das and others levelling allegation that due to operation of *Aata Chakki*, Oil Mill and Masala Mill in densely populated area, the public in general are facing harassment and receiving injury.

3. Counsel for the petitioner submits that petitioner has set up industrial unit in the year 1970 in the name and style as '*Maa Bhagwati Atta Oil Mill*' with D.G Set with capacity of 10 H.P. in the house of petitioner situated under Khata No. 120, Plot No. 857 at Naubatpur in the District of Patna, and since then, the petitioner is continuing operation without any objection of local people. The complaint petition has been filed by Rajendra Das and others before the Bihar State Pollution Control Board, Patna, alleging that operation of *Atta Chakki*, Oil Mill and Masala Mill by the petitioner in densely populated area is causing injury to the general public. The Bihar State Pollution Control Board started proceeding against the petitioner and Chairman of the Bihar State Pollution Control Board, vide letter of Ref. No. C.P-27/13 T-12456 dated 17.11.2014 (impugned order) in exercise of power conferred



by Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, has directed the petitioner to close down the unit of the petitioner with immediate effect. Counsel for the petitioner submits that petitioner after passing of the impugned order, filed application on 8.12.2014, before the Commissioner, vide Annexure-6 along with Demand Draft of Rs.5,500/- payable in favour of Bihar State Pollution Control Board, Patna, for issuance of 'No Objection Certificate' of aforesaid Mill but the same was not issued by Respondent No. 5 and his application was kept pending since long time without any rhyme or reason. He met Respondent No. 5 several times to allow him 'No Objection Certificate', but till date, the same is not allowed. The aforesaid application has been enclosed as Annexure-6 to the writ petition. Petitioner again filed representations on 19.1.2015 and 29.2.2016 before Bihar State Pollution Control Board requesting him to allow 'No Objection Certificate' but the Board did not consider his representations.

4. Counsel for the petitioner further submits that State has filed counter affidavit stating therein that representation was finally disposed off by order dated 26.04.2016 passed by the Member Secretary of Bihar State Pollution Control Board which has been enclosed as Annexure-R/5-E to the counter affidavit.



Submission of the petitioner is that Member Secretary of the Pollution Control Board is not competent authority to pass order on the application filed by the petitioner praying for 'No Objection Certificate. He has placed reliance on judgment of our own High Court in the case of ***India Rubber Product Industries Vrs. State of Bihar through Principal Secretary, Department of Industries and Others, reported in 2018(1) PLJR 184*** wherein in the similar case, the Hon'ble Court has directed Member Secretary or the competent authority of the Board to consider application of the petitioner afresh holding that Member Secretary has passed the order when the application was pending before the Board.

5. Counsel for the State has submitted that *Atta Chakki*, Oil Mill and Masala Mill of the petitioner was ordered to be closed down because the same was not as per norms laid down in sitting criteria for establishment of industrial unit from habitation, river, State/National Highway, school and hospital etc. The aforesaid criteria has been circulated by Notification No. 26 dated 8.11.2003 annexed as Annexure R/5-A to the counter affidavit. The State has further stated in the counter affidavit that petitioner has illegally established industrial unit in the midst of habitation without obtaining consent to establish and to operate from the Bihar State Pollution Control Board as required under Sections 24 and 25 of



the Water Act, 1974 and Section 21 of the Air Act, 1981. The public complaint was received from Rajendra Das and others alleging that due to operation of *Atta Chakki*, Oil Mill and Masala Mill in densely populated area, public in general are receiving injury. Therefore, inspection was conducted by the Officers of the Bihar State Pollution Control Board and it was found that the *Aata Chakki*, Oil Mill and Masala Mill with 3 DG set of capacity 10 HP were situated within habitation and the noise level, when tested, was found beyond the tolerance limit, causing air and noise pollution without care for taking steps for pollution control. The inspection report has been enclosed as Annexure R/5-B. Thereafter, the show cause notice was issued to the petitioner by the Bihar State Pollution Control Board vide letter No. T-2336 dated 19.2.2014. On the date of hearing of show cause i.e. on 25.2.2014, nobody appeared on behalf of the petitioner nor any reply to the show cause has been filed on his behalf. The Bihar State Pollution Control Board vide letter No. T-4714 dated 29.4.2014 issued direction under Section 31A of the Air Act, asking the petitioner as to why the Board should not issue appropriate direction for closure of industrial unit of the petitioner. The Bihar State Pollution Control Board ultimately vide letter No.



T-12456 dated 17.11.2014 (Annexure-1) issued closure direction, with immediate effect, under Section 31A of the Air Act, 1981.

6. Counsel for the Respondent has submitted that petitioner again filed application on 8.12.2014 for consent to establish his industrial unit for manufacturing of 100 kg. Aata and 40 kg. oil per day. The Bihar State Pollution Control Board vide letter No. T-5732 dated 4.6.2015 directed the petitioner to submit affidavit with regard to Clause 1 (iv) of the application seeking 'No Objection Certificate' regarding distance of Railway line, River, Mountain, Forest/Sanctuary, Human habitation, National Highway/State Highway etc. Xerox copy of the aforesaid letter has been enclosed as Annexure-R/5-D. The petitioner did not submit any affidavit regarding distance in spite of letter dated 4.6.2015. Thereafter, the Bihar State Pollution Control Board vide letter No. T-2413 dated 22.2.2016 requested the District Magistrate to ensure closure of unit of the petitioner. The Bihar State Pollution Control Board vide letter bearing Memo No. T-4324 dated 26.4.2016 rejected the application of the petitioner seeking 'No Objection Certificate' dated 8.12.2014 and directed the petitioner to close his unit with immediate effect. Copy of aforesaid letter has been enclosed as Annexure R/5-E.



7. Counsel for the State has brought attention of this Court to the circular issued by the Pollution Control Board as contained in Annexure R/5-A to the counter affidavit wherein the guidelines has been issued under the Provisions of Section 17, 25/26 of Water (Prevention and Control of Pollution) Act, 1971, Sections 17 and 21 of the Air (Prevention and Control of Pollution) Act, 1981 respectively. As per Annexure R/5-A of the aforesaid guidelines, battery limit of the unit from habitation for Flour Mill (capacity more than 1 tonne per day for Flour Mill and Oil Mill) has been mentioned as 200 mtrs and 100 mtrs. respectively. He has further submitted that during inspection, the unit of the petitioner was found within residential area as will appear from item No. 9 of the report of Bihar State Pollution Control Board as contained in Annexure-R/5-A to the counter affidavit. He further submits that the noise pollution control system was found 'Nil' as mentioned in the aforesaid report. The noise limit was also found beyond the prescribed limit.

8. Counsel for the State has further submitted that petitioner again applied for 'No Objection Certificate' on 8.12.2014 which has been enclosed as Annexure-R/5-C of the counter affidavit and Annexure-6 of the writ petition wherein the petitioner himself has mentioned the distance of his Mill from



human habitation to be 9 mtrs. which is not within the permissible limit in terms of guidelines enclosed as Annexure-R/5-A to the counter affidavit.

9. In such circumstances, this Court does not find any illegality in the order as contained in Annexure-1 passed by the Bihar State Pollution Control Board directing the petitioner to close down the *Aata Chakki*, Oil Mill and Masala Mill. This Court further finds that location of aforesaid *Aata Chakki*, Oil Mill and Masala Mill of the petitioner is situated within densely populated area and not beyond the distance of habitated area, as required in the guidelines issued by the Bihar State Pollution Control Board for habitation, which has been enclosed as Annexure-R/5-A. The representation filed by the petitioner vide Annexure-6 has already been rejected and he was directed to close down the unit.

10. Therefore, this Court, after looking into the guidelines of Bihar State Pollution Control Board annexed as Annexure-R/5-A and admission of the petitioner in the application filed for obtaining 'No Objection Certificate' enclosed as Annexure-6 to the writ petition and Annexure-R/5-C of the counter affidavit, finds that the *Aata Chakki*, Oil Mill and Masala Mill of the petitioner is situated within densely populated area and habitation in terms of guidelines of Bihar State Pollution Control



Board annexed as Annexure R/5-A. The petitioner himself has mentioned in the aforesaid application that his Mill is situated within 9 mtrs. from human habitation.

11. Therefore, this Court does not find any illegality in the impugned order.

12. This writ application is accordingly dismissed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	30/04/2019
Transmission Date	

