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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**COCP No.219 of 2013
Date of Decision: 04.12.2019**

Halcyon Pharmaceuticals Limited, Loharu, District Bhiwani

Petitioner

Versus

Dr. Avtar Singh, Chairman, Haryana State Pollution Control Board,
Panchkula

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. N.R. Dahia, Advocate
for the petitioner.

Mr. Deepak Balyan, Advocate
for the respondent.

AVNEESH JHINGAN, J (Oral):

The writ petition was filed by the petitioner raising grievance regarding emission of odour, smell and stink by the industries and other establishments including poultry farms and seeking issuance of directions to the State to take necessary steps to prevent air pollution. During the pendency of the writ petition, the Court was informed that Union of India had issued notification dated 15.03.2011 prescribing norms, parameters and standards of the ambient air quality emitted by such industries and poultry farms. In the meantime, Ministry of Environment and Forests issued notification dated 16.11.2009 providing national ambient air quality

standards. By an application, certain guidelines were placed on record by the Central Pollution Control Board [hereinafter referred to as 'the Central Board'] and counsel appearing for Haryana State Pollution Control Board [hereinafter referred to as 'the State Board'] submitted that these guidelines were being accepted, in view thereof, the petition was disposed of. The authorities were directed to take action against the Units not maintaining standards laid down in the notification issued by the Central Board. It was further ordered that if the petitioner finds that guidelines were not being followed by the industrial units, then it will be at liberty to file a complaint with the Chairman of the State Board, who shall take action forthwith.

The contempt petition was filed pleading violation of directions dated 03.07.2012 of this Court.

The grievance raised by the learned counsel for the petitioner is that in spite of directions of this Court, Poultry Farm is still continuing at its original place. The further grievance raised is that while adopting guidelines of the Central Board, the State Board has made certain modifications to the policy.

Learned counsel for the respondent contends that the Poultry Farm is continuing, as after inspection, it was found that it is fulfilling the criteria. He further defends the modification to the guidelines issued by the Central Board by stating that needful was done considering the ground realities of the State and to make it effectively implemented.

From the pleadings, it is forthcoming that in pursuance to

the legal notice given by the petitioner, a show cause notice was issued to the Poultry Farm on 12.11.2013. Thereafter, on 27.11.2013, the Poultry Farm was inspected by the Regional Officer of the State Board and it was found that Unit was not complying with the standing order dated 27.05.2013. It would be pertinent to note that standing order was passed following the guidelines of the Central Board. It was recommended by the officials to the Environmental Department, Haryana to take appropriate action under Section 5 of the Environment (Protection) Act, 1986 [hereinafter referred to as 'the Act']. The action was followed by issuing various show cause notices under the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as to why the unit should not be closed.

Vide order dated 23.04.2014, on the recommendation, the Government of Haryana issued directions to the Poultry Farm to stop the farming activities and not to replace/add any Birds in future. As the Poultry Farm was not complying with the directions, a complaint under Section 15 and 19 of the Act was filed before the Environment Court, Faridabad. On 10.11.2015, order of closures were issued by the State Government directing the Poultry Farm to dispose of all the existing birds within sixty days. An FIR was lodged against the Poultry Farm as it was disrupting the inspection by the officials.

Aggrieved of the closure order, the Poultry Farm filed an appeal before the National Green Tribunal [hereinafter referred to as

'the Tribunal'] raising a grievance that guidelines/ standing order was being complied with and the inspection made by the officials was not proper. During the pendency of the appeal, inspections were made by the State Board. The Tribunal vide interim order dated 13.05.2016, directed the Central Board to inspect the Poultry Farm. A joint inspection was carried out by the Central Board and the State Board on 25.05.2016. As per the inspection report, it was found that Poultry Farm was complying with the standing order dated 27.05.2013, as the said guidelines/criteria were not applicable to the Poultry Farms commissioned prior to the issuance of the standing order. The appeal was disposed of on 29.07.2016, directing the Poultry Farm to file fresh application before the State Board, seeking consent to operate. The Board was directed to deal with the application expeditiously. The State Board rejected the application on 28.09.2016. Against the rejection order, appeal was filed before the Tribunal. The Tribunal, on 01.02.2017, allowed the appeal. The Poultry Farm was allowed to run for a period of three months. During the said period, the State Board, had to conduct the inspection to ascertain as to whether deficiencies pointed out in the notice by the Board have been removed or not. The State Board on 18.05.2017, after inspection, gave consent to the Poultry Farm to resume operations.

The directions dated 03.07.2012 of this Court that in case petitioner finds that guidelines are not being followed, a complaint could be made to the State Board, which shall take stern action,

were duly complied with in this case. From the facts mentioned above, it is evident that not only show cause notices were issued, even inspections were carried out and closure order was also passed against the Poultry Farm. It is only after the success in the appeal before the Tribunal and the State Board being satisfied with regard to the various compliances that a consent for resuming operations was given.

At this stage, learned counsel for the petitioner submits that consent to operate has wrongly been given to the Poultry Farm, as earlier it was rejected.

The said aspect cannot be gone into the contempt proceedings. It will not be within the ambit of the contempt proceedings to go into the challenge to the order giving consent to operate. Moreso, the Poultry Farm is not impleaded as a party in the contempt petition, it would be against the principles of natural justice to make any adverse observations against the person who is not a party to the litigation.

Learned counsel for the petitioner submits that the contempt Court should restrict itself to the order passed by the Writ Court and should not take into consideration proceedings before the Tribunal.

There is no quibble with the said proposition. The Supreme Court in **Er. K. Arumugam Vs. V. Balakrishnan & Ors.** **2019 AIR(SC) 818** held that the contempt Court shall restrict itself within the four corners of the order passed which is alleged to be

violated.

This itself fortifies the fact that in contempt proceedings, the challenge posed to the order giving consent to operate and grievance against the Tribunal's order cannot be entertained.

Further reliance is placed on the decision of the Supreme Court in **Jhareswar Prasad Paul Vs. Tarak Nath Ganguly 2002(5) SCC 352.** The relevant portion of the order is reproduced below:-

“The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. Since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged

by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes leveled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts."

(emphasis supplied)

As regard to the grievance that the guidelines issued by the Central Board were adopted by the State of Haryana with certain modifications, the said issue gives fresh cause of action to the

petitioner.

No case is made out for wilful disobedience of directions of this Court, rather there is substantial compliance of the directions of this Court, the petition is dismissed.

However, it would be open to the petitioner, to avail remedies in accordance with law against the policy adopted by the State of Haryana by passing standing order dated 27.05.2013.

[AVNEESH JHINGAN]
JUDGE

December 04, 2019

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |