

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 136 of 2019**

Chhattisgarh Environment Conservation Board, Through its Regional Officer, Chhattisgarh Environment Conservation Board, Regional Office, Near Tehsil Office, Rampur, Korba, District – Korba (C.G.)

-----Petitioner

Versus

Korba Super Thermal Power Station, M/s NTPC Limited, Jamnipali Korba, 2600 Megawatt Electricity Plant, P.S. - Darri, Tehsil – Katghora, District – Korba (C.G.), Through its Officer Incharge, Shri Prakash Tiwari, Group General Manager, Korba Super Thermal Power Station, M/s NTPC Limited, Jamnipali Korba, 2600 Megawatt Electricity Plant, P.S. - Darri, Tehsil – Katghora, District – Korba (C.G.)

----- Respondent

For Petitioner	: Mrs. Aditi Singhvi, Advocate.
For Respondent	: Dr. N.K. Shukla, Senior Advocate with Shri Apporva Panda, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/01/2020

(1) The petitioner filed a complaint under Sections 22, 22A and 37 of the Air (Prevention and Control of Pollution) Rule, 1981 on 18.02.2015 before the Judicial Magistrate, First Class, Katghora, against the respondent being Complaint Case No. 1629/2015 and on the same day i.e. 18.02.2015 it was ordered that the process be issued against the respondent and process fee be paid for appearance of respondent, which was not paid by the

petitioner for several occasions and ultimately on 16.05.2018, complaint case was dismissed for non payment of process fee.

(2) The petitioner preferred revision thereagainst. Revision preferred there-against by the petitioner was also dismissed by the revisional Court while affirming the order of trial Court vide impugned order, against which instant petition under Section 482 of the Cr.P.C. has been preferred.

(3) Learned counsel appearing for the petitioner would submit that both the courts below are absolutely unjustified in dismissing the complaint filed by the petitioner as the opportunity ought to have been granted warning complainant/petitioner to make payment of process fee for serving the respondent. He submits that since the complaint has been filed under the provisions of Air(Prevention and Control of Pollution) Rule, 1981, therefore, the complaint must be decided on merits.

(4) Per contra, learned Senior Counsel appearing for the respondent vehemently opposes the contention raised by the petitioner and submit that petitioner remained chronic defaulter in non payment of process fee, as such, learned trial Magistrate is absolutely justified in dismissing the complaint for default of three years in not making payment of process fee by the petitioner.

(5) I have heard learned counsel appearing for the parties

and perused the material available on record with utmost circumspection.

(6) Fact remains that process fee was not paid by the petitioner right in time, that too, for a long period of three years but the golden principle is, "justice should not only be done but seen to be manifestly done," has to be borne in mind always. Though, the time was granted but the trial Magistrate did not warn the complainant nor passed any peremptory order holding that if the process fee is not paid within the stipulated time, the complaint case shall stand dismissed automatically without reference to the court.

(7) In view of above, in order to adjudicate the complaint on merits and in the interest of justice, the impugned order is liable to be and is hereby set aside and the complaint case is restored to the file of Judicial Magistrate, First Class, Katghora for hearing & disposal in accordance with law and the complainant will appear before the trial Court on 27.01.2020 and pay the process fee for issuance of notice to the respondent in accordance with law.

(8) The Cr.M.P. is allowed to the extent indicated hereinabove.

(9) Record of the courts below be sent back forthwith.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

