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***CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION
(Via Video Conference)***

W.P.A. 589 OF 2021

Sheela Foam Ld. & Anr.

-vs.-

State of West Bengal & Ors.

Mr. Mukul Rohatgi, Sr. Advocate
Mr. Vipul Kundalia
Mr. Gyanendra Kumar
Mr. Siddharth Lahiri
Ms. Pallavi Rao
Mr. Soumya Dasgupta
Mr. Ayanava Raha

....For the Petitioner.

Mr. Hirak Barman
Mr. Bikramaditya Ghosh

....For State Respondents

Mr. Prithwish BasuFor PCB

Mr. Sudipta Kanta Bhowmik
Ms. Dipti Bhowmik

....For Respondent No. 7

1. Affidavit-of-service, filed in Court today, be kept with the records.

2. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order dated September 24, 2020 passed by the Principal Secretary, State Level Environment Impact Assessment Authority (hereinafter referred to as 'the SEIAA') and an order dated February 10, 2021 passed by the Chief Engineer, Operation and Execution Cell, West

Bengal Pollution Control Board (hereinafter referred to as 'the PCB').

3. It is the submission of the writ petitioner that the SEIAA has passed an order stating that the petitioner had started operation of the plant without obtaining environmental clearance. Based on this fact, the SEIAA has held that the petitioner has committed violation of the EIA Notification, 2006 (hereinafter referred to as 'the said notification').

4. Mr. Mukul Rohatgi, learned Senior Advocate appearing on behalf of the petitioner submits that the PCB had granted the petitioner 'Consent to Operate' on September 12, 2018 specifically stating that Notification S.O. 1533(E) dated 15.9.2006 would apply and environmental clearance would be required to be taken by the petitioner, only if storage capacity of Toluene di isocyanate (TDI) exceeds 10 MT. It is the submission of Mr. Rohatgi that the plant was started with a storage capacity of less than 10 MT and subsequently they required to expand the storage capacity of the TDI from less than 10 MT to 60 MT, and accordingly, an application was made by them for environmental clearance as per the said notification.

5. Mr. Rohatgi concedes that an error had been made in the said application and the 'Industry'

defined in serial No. 2 was provided as '5(f)' when the same should have been '6(b)'. He, accordingly submits that since industries under 5(f) are required to take prior environmental clearance, the SEIAA without looking into the letter of consent of the petitioner passed the impugned order.

6. Mr. Rohatgi further buttresses his argument with the submission that the petitioner's industry is situated in an industrial estate that already has environmental clearance. He further refers to the note marked as 'Specific Conditions' in the said notification that reads as follows :

"Specific Condition (SC):

If any Industrial Estate/Complex/Export processing Zones/Special Economic Zones/Biotech Parks/Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre-defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such estates/complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate)."

7. He further relies on pages 91 and 101 of the writ petition to indicate that the industrial estate, wherein the petitioner is carrying on business, is

having environmental clearance. He accordingly submits that the 'specific conditions' applies to the petitioner, and therefore, no individual clearance is required. He submits that SEIAA should have looked into this issue prior to passing the impugned order.

8. Mr. Rohatgi further submits that the PCB by a letter dated June 15, 2020 had, in fact, amended the condition of the storage capacity and stated that environmental clearance of isolated storage of hazardous chemicals under the MSIHC Rules, 1989 as amended shall not be required. He, accordingly submits that the petitioner was not even required to seek such permission for expansion. This fact was also not taken into account by the SEIAA.

9. I have heard counsel appearing on behalf of the parties and perused the materials on record. It is clear from the impugned order dated September 24, 2020 that the SEIAA has ventured beyond its mandate, in the sense, that not only have they rejected the proposal of the petitioner for expansion of storage capacity from 10 MT to 60 MT, they have held that the industry has committed violation of EIA notification and directed the PCB to take appropriate action that has led to the closure of the industry.

10. Secondly, it is to be noted that the principles of natural justice have also not been followed before taking such a drastic step of closure of an industry that employs over 190 persons. Before taking such a drastic step of directing closure of a running industry, it is natural that hearing should have been granted to the petitioner. Clearly, the principles of *audi alteram partem* have not been followed in the present case. In the event, SEIAA had granted an opportunity of hearing to the petitioner, the issues in relation to the letter dated June 15, 2020 as well as the fact that the industry was in an industrial estate that had environmental clearance would have been informed to the SEIAA by the petitioner. However, since no opportunity was given to the petitioner the documents were not brought to the notice of the SEIAA. Accordingly, I am of the view that it is crystal clear that the SEIAA has committed an error in law by not considering the relevant materials on record.

11. In light of the above reasons, I quash and set aside the order dated September 24, 2020 as well as the order dated February 10, 2021 and direct the SEIAA to grant an opportunity of hearing to the petitioner upon notice of seven days', and thereafter, pass a reasoned order within a period of four weeks from date. The reasoned order should be

communicated to the petitioner within a week of passing of the same.

12. The West Bengal Electricity Board is directed to immediately restore the electric connection within two days from date.

13. With the above direction the writ petition is disposed of. There will be no order as to costs.

14. Since no affidavit-in-opposition is called for, the allegations made in the writ petition are deemed not to have been admitted.

15. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)