

**Harishri Aromatics and Chemicals }
Private Limited } Petitioners**
versus
State of Maharashtra and Ors. } Respondents

Mr. Jitendra Jagtap for respondent nos. 2 and 3 (MPCB).

DATE :- NOVEMBER 23, 2021

1. The Regional Officer, Kolhapur of the Maharashtra Pollution Control Board, respondent no.3, by a notice dated 29th October 2020 called upon the petitioner to show cause as to why appropriate action shall not be initiated against it for causing grave injury to the surrounding environment by violating environmental rules. The petitioner responded to the show-cause notice by its reply dated 12th December 2020. According to it, the deficiencies that were pointed out in the show-cause notice having since been removed, no adverse action was called for. Almost 9 (nine) months after the reply

was forwarded by the petitioner, by a communication dated 6th October 2021, the respondent no.3 directed closure of the petitioner's unit under section 33A of the Water (Prevention and Control of Pollution) Act 1974, section 31A of the Air (Prevention and Control of Pollution) Act, 1981 and the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008. Pursuant to such order of closure, supply of water to the petitioner's unit has been disconnected.

2. This writ petition is directed against the closure order dated 6th October 2021 as well as disconnection of water supply to the petitioner's unit.

3. Mr. Jagtap, learned advocate for the respondent no.3 raises a preliminary objection to the maintainability of the writ petition by submitting that the petitioner has an alternative remedy before the National Green Tribunal under section 16 of the National Green Tribunal Act, 2010 (hereafter "the NGT Act", for short) and that he ought to be relegated to such tribunal.

4. No doubt, section 16 of the NGT Act provides a remedy of appeal; however, existence of such remedy does not oust the jurisdiction of the writ court. The rule of exhaustion of alternative remedy is a rule of convenience and discretion rather than a rule of law. Having regard to the limited nature of relief prayed for by Dr. Sathe, learned senior counsel appearing for the petitioner, we propose to consider the same for the reason that follows.

5. Dr. Sathe has brought to our notice that the impugned order dated 6th October 2021 refers to a complaint received

from a "VIP", who happens to be none other than a Member of the Legislative Council. According to Dr. Sathe, copy of the complaint, which might have triggered the order of closure, was never served on the petitioner. Further, the order of closure does not deal with any of the points raised in the reply dated 12th December 2020 to the show-cause notice dated 29th October 2020. These infirmities, it has been contended, constitute violation of principles of natural justice. It is the submission of Dr. Sathe that there are good reasons for quashing the impugned order of closure but since the closure order had been given effect, the petitioner proceeded to remove the deficiencies pointed out therein and thereafter submitted a representation dated 18th October 2021 before the respondent no.3 seeking that such order be revoked. Dr. Sathe also submits that the petitioner would be satisfied if, for the present, the respondent no.3 is directed to proceed to consider the prayer for revocation of the closure order in the light of removal of deficiencies by the petitioner and in accordance with law.

6. The contention of violation of principles of natural justice, *prima facie*, does not appear to be without any substance. The closure order does not record that copy of the complaint of the "VIP" was served on the petitioner. Such order also does not reveal consideration of the pointwise reply submitted by the petitioner. In view thereof, entertainment of the writ petition would not be contrary to any decision of the Supreme Court. Also, bearing in mind the limited prayer of Dr. Sathe, we dispose of this writ petition with a direction upon the respondent no. 3 to take an appropriate decision on the

representation dated 18th October 2021 in accordance with law upon affording an opportunity of hearing to the petitioner's authorized representative, within a period of 6 (six) weeks from date of receipt of a copy of this order.

7. Prior to taking a decision on the petitioner's representation dated 18th October 2021, it shall be open to the respondent no.3 to conduct such surprise inspection/visit at the petitioner's unit to ascertain whether the deficiencies pointed out in the order dated 6th October 2021 stand removed or not. Should the petitioner be found to have complied with all the statutory requirements and removed the deficiencies, the closure order may be revoked with such conditions that may be imposed by the respondent no.3. If, upon inspection and hearing the petitioner, the respondent no.3 is of the view that the closure order should be continued, he shall pass a reasoned order and intimate the same to the petitioner. All contentions are left open.

8. With the aforesaid directions, the writ petition stands disposed of. There shall be no order as to costs.

SALUNKE
J V

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by SALUNKE J V
Date: 2021.11.24
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(M. S. KARNIK, J.)

(CHIEF JUSTICE)