

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

CRM-M No.25147 of 2021

Date of Decision: 18-11-2021.

Devendra Parkash Shah

...Petitioner

Versus

Haryana State Pollution Control Board & Another

...Respondents

CRM-M No.37504 of 2021

Pritam Parkash Shah

...Petitioner

Versus

State of Haryana & Another

...Respondent

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Dharam Vir Sharma, Senior Advocate with
Ms. Sharmila Sharma, Advocate,
for the petitioner(s).

Mr. Kuldeep Tiwari, Advocate,
for respondent No.1-Haryana State
Pollution Control Board.

Mr. S.S.Pannu, Deputy Advocate General, Haryana.

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MEENAKSHI I. MEHTA, J.

Both the instant petitions are being taken-up together for discussion and adjudication as these have arisen out of the same Complaint Case bearing No.03 of 2020, filed by respondent-Haryana State Pollution Control Board (for short 'the respondent-Board') against them and their co-accused Parag Parkash Shah as well as M/s Parag Milk Foods Ltd, under

Sections 43, 44 & 47 of the Water (Prevention and Control of Pollution) Act, 1974 (for short, “the Act”) for the alleged violation of Section 24/25 of the Act (Annexure P-1) and the same order dated 11.09.2020 (Annexure P-2) as passed by the Special Environment Court, Kurukshetra for summoning them to face trial therein and both the petitioners herein seek the quashing of the said Complaint and also the summoning order.

2. Bereft of unnecessary details, the facts, culminating in the filing of both these petitions, are that petitioner-Devendra Parkash Shah is the Chairman and petitioner-Pritam Parkash Shah is the Managing Director of accused-M/s Parag Milk Foods Limited, which deals in the manufacturing of fermented dairy products. The said Unit was inspected by the Special Environment Surveillance Task Force (SESTF) team on 17.08.2019 and during the inspection, it (Unit) was found to be discharging the effluent directly into the rain water harvesting pit, with the help of the by-passing arrangements, without its treatment through ETP and also to be indulging in reverse pumping. The sample of the water was collected from there and was sent to HSPCB laboratory for its analysis and as per the Analyst's report, the same was found to be exceeding/non-conforming with the general standards for the discharge of Environmental Pollutants. Thereafter, a show cause notice for the closure was issued to the Unit on 03.09.2019 and the closure order was passed by the Competent Authority on 09.09.2019 and the compliance report in this regard was sent to the Head Office on 17.09.2019. Resultantly, the afore-said Complaint Case was filed by the respondent-Board against the above-said Company and the petitioners and their above-

named co-accused as well and vide the impugned order Annexure P-2, they have been summoned to face trial in the said case.

3. It is pertinent to mention here that the revision petition, as preferred by petitioner-Devendra Parkash Shah against the said order Annexure P-2, has also been dismissed by the Additional Sessions Judge, Kurukshetra, vide the order dated 11.02.2021 (annexed as P-4 in CRM-M No.25147 of 2021) and this order has also been sought to be quashed by him in the above-said petition.

4. Separate replies have been filed on behalf of both the respondents in these petitions along-with Annexures R-1 to R-5 in CRM-M No.25147 of 2021 and Annexures R-1 to R-6 in CRM-M No.37504 of 2021.

5. I have heard learned Senior counsel for the petitioner(s), learned State counsel as well as learned counsel for the respondent-Board in the present petitions and have also gone through the files carefully.

6. Learned Senior counsel for the petitioners has contended that petitioner-Devendra Parkash Shah is the Chairman and petitioner-Pritam Parkash Shah is the Managing Director of M/s Parag Milk Foods Limited and they are based at Pune and it being so, it is quite explicit that they were not responsible for the alleged violation of the provisions of the Act and therefore, they cannot be held vicariously liable for the alleged commission of the offences in the said Complaint Case specially in the circumstances when there are no specific allegations against them in this regard in the said Complaint. To buttress his contentions, he has placed reliance upon the observations made by the Apex Court in **Ravindranatha Bajpe vs.**

**Mangalore Special Economic Zone Ltd. & Others Etc. Criminal Appeal
Nos.1047-1048/2021 Decided on 27.09.2021.**

7. Per contra, learned counsel for the respondent-Board has referred to Annexure R-4 in CRM-M No.37504 of 2021 (annexed as R-3 in CRM-M No.25147 of 2021), i.e the copy of the Memorandum of Association of the afore-said Company and he has pointed out that as per the list of the Directors as tagged therewith, petitioner-Devendra Parkash Shah is the Chairman and petitioner-Pritam Parkash Shah is the Managing Director and he has also referred to Annexure R-5 in CRM-M No.37504 of 2021 (annexed as R-4 in CRM-M No.25147 of 2021), i.e the list of the Executive/Working Board of Directors of the said Company as on 11.09.2019 wherein the names of both the petitioners, as such, find mention and he has argued that in view of these documents, it is crystal clear that the petitioners are the persons who are responsible for running the said Unit as well as its day-to-day affairs and thus, they have rightly been sought to be prosecuted for the commission of the offence under the above-discussed provisions of the Act.

8. I find force in the arguments of learned counsel for the respondent-Board because as per the afore-said list of the Directors tagged in/with Annexure R-4 in CRM-M No.37504 of 2021, petitioner-Devendra Parkash Shah is the Chairman and petitioner-Pritam Parkash Shah is the Managing Director of the said Company and the names of several other Directors also find mention therein and as shown in Annexure R-5 in CRM-M No.37504 of 2021, i.e the list of the Executive/Working Board of

Directors of the above-said Company as on 11.09.2019, both the petitioners were holding the afore-mentioned respective posts meaning thereby that at the time of the inspection of the said Unit by the SESTF Team and the issuance of the said show cause notice as well as the closure order, they were working as such and it has categorically been mentioned in Para 3 of Complaint Annexure P-1, as preferred by the respondent-Board against them that they were the Directors of the accused Company and were looking after its day-to-day affairs and were, thus, responsible for all the acts, omissions and commissions of the said company. In these circumstances, it does not lie in the mouth of both the petitioners to assert that they had no role to play in the alleged violation of the provisions of the Act and that hence, they could not be fastened with the liability for the same.

9. The observations, as made by the Hon'ble Supreme Court in **Ravindranatha Bajpe (supra)**, are of no avail to the petitioners because in the afore-cited case, some of the accused had been ordered to be summoned for the alleged commission of the offences under Sections 427, 447, 506 & 120-B read with Section 34 IPC because of their being the Chairman/Managing Director/Executive Director/Deputy General Manager etc. of the accused Company whereas in the instant case, there are specific provisions, as contained in Section 47 of the Act, providing for the liability of the persons, in charge of and responsible for the business of the Company, in the eventuality of an offence having been committed by a Company under the Act.

10. Learned Senior counsel for the petitioners has, further,

contended that the above-said Company had been given the “Consent to Operate” (CTO) by the respondent-Board vide the letter dated 04.12.2018 (annexed at Page 52 in CRM-M No.37504 of 2021) for the period from 01.10.2018 to 30.09.2023 and the SESTF Team had visited and inspected the said Unit on 17.08.2019, i.e during the period of the validity of the said 'Consent to Operate' and it being so, the petitioners could not be prosecuted for the alleged violation of the afore-mentioned provisions of the Act and moreover, the amount of environmental compensation has also been paid by the accused-Company and in these circumstances, Complaint Annexure P-1 was not maintainable and the impugned summoning order could not have been passed against the petitioners and their co-accused.

11. However, this contention is devoid of any merit because as per the terms and conditions annexed with the said order dated 04.12.2018 passed qua the grant of 'Consent to Operate' (at Pages 54 to 56 in CRM-M No.37504 of 2021), the said Unit was required to ensure that the characteristics of the effluents remained within the tolerance limits as specified in EPA Standard and as amended from time to time and at no time, the concentration of any characteristic should exceed these limits for discharge and also to keep the parameters within the permissible limits. Annexure R-2 (in both the petitions) is the copy of the Analysis Report of the water sample collected by SESTF Team from the above-mentioned Unit and it has categorically been mentioned in Para 6 of the copy of the Complaint (at page 23 in CRM-M No.37504 of 2021) that as per the said report, the parameters were found to be exceeding/non-conforming with the

general standards of the discharge of Environmental Pollutants. This fact itself shows that Complaint Annexure P-1 has been filed for the alleged violation of the terms and conditions of the said 'Consent to Operate'.

12. Further, though in Para No.7 of the order (Annexure P-4) (assailed in CRM-M No.25147 of 2021), it has been mentioned that the amount of environmental compensation was deposited on 15.11.2019, in compliance of the order dated 01.10.2019 passed by the competent authority in this regard but it has also been further observed therein that the same had not been deposited within the stipulated period. Although, learned Senior counsel for the petitioner has contended that the said amount was deposited within the prescribed period from the date of the receipt of the copy of the said order but however, no material has been placed on the record, at this stage, to show as to when the petitioners had received the same. Rather, it would be a subject matter for consideration and adjudication before/by the trial Court, in view of the evidence that may be led on the record during the course of the trial.

12. As a sequel to the fore-going discussion, it follows that both the petitions in hand, being *sans* any merit, deserve dismissal. Resultantly, the same stand dismissed accordingly.

(MEENAKSHI I. MEHTA)
JUDGE

18th November, 2021.
seema

Whether speaking/reasoned?	Yes
Whether Reportable?	Yes