

IN THE HIGH COURT OF ORISSA AT CUTTACK
WA No. 587 of 2022

Kabir Kumar Chanduka & Others ***Appellants***
Mr. Trilochan Panigrahi, Advocate

-versus-

Union Of India & Others ***Respondents***
Mr. P.K. Parhi, Advocate

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)

Order No.

21.07.2022

- 01.** 1. This matter is taken up by virtual/physical mode.
2. Citing public inconvenience on account of establishment of petrol pump near Sri Gundicha Temple, Puri, the Petitioners approached this Court in W.P. (C) No. 7226 of 2022 passed by the Learned Single Judge which came to be disposed of 31st March, 2022 with following observation:-

 “3. Taking this Court to the condition criteria at Page-51 of the Brief involving the Central Pollution Control Board Office Memorandum dated 7th January, 2020 and demonstrating through the Writ Petition, learned counsel for the Petitioner contended that there has been grant of no objection certificate by the District Magistrate, Puri, vide Annexure-5 completely contradicting the requirement at Page-51 of the Brief being introduced by the Central Pollution Control Board. It is averred, in bringing such condition through the Office Memorandum, it also claimed that this Office Memorandum has also been marked to the Member Secretary, Orissa State Pollution Control Board appearing at Serial No.20 of Page-45 of the Brief and the Orissa State Pollution Control Board remains binding to the conditions settled therein. In this view of the matter, learned counsel for the Petitioners alleged that while granting no objection

certificate in the locality having school, temple of World reputation, large and small houses in and around and more particularly, and district level hospital going to be operating with Medical College, the District Magistrate, Puri at least should have involved the Pollution Control Board Authority so as to see there is meeting with the condition criteria at Clause-H of the Office Memorandum dated 7th January, 2020. Further such issues also required involvement of public objection and participating and participation and installation of the nature of Institution will endanger the human living in such area. It is in the circumstance, there is an attempt to challenge the No Objection Certificate at Annexure-5 by way of this Writ Petition. This Court finds from Page-51 of the Brief, the condition criteria fixed through the Office Memorandum dated 7th January, 2020 issued by the Central Pollution Control Board as follows :-

“H. Sitting criteria of Retail Outlets:

In case of citing criteria for petrol pumps new Retail Outlets shall not be located within a radial distance of 50 meters (from fill point/dispensing units/vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from schools, hospitals (10 beds and above) residential area designated as per local laws shall be less than 30 meters. No high tension line shall pass over the retail outlet.

These guidelines are supplementary to all existing relevant Rules, Guidelines, Orders etc.”

4. Copy of such Office Memorandum since issued also to the local Pollution Body, the condition therein also must bind such Parties. Looking to the allegation in the Writ Petition and the submissions made herein, this Court though finds the Petitioner has series of allegations but no attempt has been made as of now to the State Level Authorities involving such allegation. For the opinion of this Court, such allegations are at the first instance be examined by the Pollution Control Board Authority and/or the Green Tribunal created for the

purpose in the minimum before this Court steps into such jurisdiction. In the process, this Court while declining to entertain the Writ Petition at this stage directs the Petitioners to approach either the State Pollution Control Board or even to the Green Tribunal, as advised, at least within ten days. If a complain is made in due time, any of the Authorities addressed with such allegations, shall do well in considering the allegation of the Petitioners and taking decision in accordance with law giving opportunity to the Parties likely to be affected.”

3. Mr. Trilochan Panigrahi, counsel for the Appellants submitted that the guidelines issued by the Central Pollution Control Board *vide* Office Memorandum dated 7th January, 2020 has been given a go-bye.

4. This is an intra-court appeal, as such the scope of interference is very little. Perusal of the order of this Court passed in afore-noted writ petition shows that the learned Single Judge was pleased to direct the petitioner to approach the Pollution Control Board Authority and/or the Greens Tribunal who are competent to consider the grievance of the Petitioner. Therefore, this Court directed the Petitioners to move either the State Pollution Control Board or the Greens Tribunal, if so advised.

5. Instead of Petitioners pursuing remedy before the Competent Authority, they have misdirected themselves and filed this Letters Patent Appeal. They have chosen to avail the liberty as granted by the learned Single Judge.

6. This Court finds that the direction of the learned Single Judge is in order and does not warrant intervention.

7. The conduct of the Petitioners in filing intra-Court appeal against liberty granted to them to move the appropriate Competent Authority is not appreciated. It appears that the Writ Appeal has been filed for gaining “otherwise popularity”.

8. The Writ Appeal, sans material particulars, is, therefore, dismissed.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant

July 21st, 2022 Cuttack

