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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5563 OF 2021

M/s. Swami Tyre Works .. Petitioner
Vs
Maharashtra Pollution Control Board
and anr. .. Respondents

**WITH
INTERIM APPLICATION NO. 1021 OF 2022
IN
WRIT PETITION NO. 5563 OF 2021**

Lt. Col. M/s. Shomi Sugathan .. Applicant

IN THE MATTER OF

M/s. Swami Tyre Works .. Petitioner
Vs
Maharashtra Pollution Control Board
and anr. .. Respondents

Mr. T. R. Yadav i/b. Mr. Prashant P. Bhat for petitioner in WP/
5563/2021.

Mr. Pandit Kasar for applicant in IA/1021/2022.

Mrs. Sharmila Deshmukh for respondent no. 1 – MPCB.

Mr. B.V. Samant, AGP for respondent no. 2 - State.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : JULY 1, 2022

P.C. :

1. Heard Mr. T. R. Yadav, learned advocate for the
petitioner, Mrs. Sharmila Deshmukh, learned advocate

appearing on behalf of the respondent no. 1 and learned AGP appearing on behalf of the State.

2. The petitioner is challenging a closure order dated December 9, 2019 passed by the Regional Officer, Pune of the respondent no. 1 – Maharashtra Pollution Control Board, Pune (hereafter "MPCB (P)", for short) under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 and Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and amendments thereafter.

3. It is contended by learned advocate for the petitioner that the petitioner is carrying on the business of retreading/remoulding on Small Scale of less than 15 tyres a day and there is no requirement of permission from MPCB in view of sub-clause (1) of Clause (III) of the notification dated May 31, 2016 issued by the Government of Maharashtra. It is further contended that the impugned order dated December 9, 2019 is passed in breach of the principles of natural justice. Learned advocate submits that no opportunity of hearing was given to the petitioner before passing such a drastic order of closure.

4. Learned advocate for the respondent no. 1 on the other hand submitted that a show cause notice dated August 26, 2019 was served on the petitioner calling him for a personal hearing on January 29, 2019. In her

submission, the petitioner did not avail of such an opportunity.

5. We have gone through the reply dated August 22, 2019 to the warning notice issued by the MPCB to the petitioner. No doubt, the reply dated August 22, 2019 is prior to the issuance of the show cause notice dated August 26, 2019. Learned advocate for the petitioner submitted that the petitioner was under the impression that the reply dated August 22, 2019 would be considered by the respondent no. 1 as a response to the show cause. Learned advocate for the petitioner requested that an opportunity be granted to the petitioner, as he was under a mistaken impression that the reply dated August 22, 2019 was sufficient compliance to the show cause notice dated August 26, 2019. In such view of the matter, in our opinion, as a drastic order of closure has been passed, it is in the interest of justice that an opportunity to respond to the show cause notice dated August 26, 2019 and a personal hearing must be given to the petitioner.

6. The petitioner to remain present before the Regional Officer, MPCB (P) on July 6, 2022 at 11.00 a.m. The petitioner is at liberty to file a response to the show cause notice. The respondent no. 1 to grant personal hearing to the petitioner. The respondent no. 1 shall personally hear the petitioner on the same day or at a later date but in any case a decision be taken not later than two weeks from July 6, 2022.

7. In case the Regional Officer, MPCB (P) decides in favour of the petitioner, the impugned order of closure will cease to operate and an appropriate restart order will be issued. The petitioner is at liberty to challenge the impugned order in this petition or any subsequent order which may be passed in case the same is adverse to his interest. We may not be understood to have expressed any opinion on the merits of the contentions. All contentions are kept open.

8. The writ petition stands disposed of. There shall be no order as to costs.

9. In view of the disposal of the writ petition, nothing survives for consideration in the intervention application and the same stands disposed of. The intervenor is at a liberty to apply before the respondent no. 1 in the pending proceedings which application be dealt with in accordance with law.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)