

PMB

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

WRIT PETITION NO. 6586 OF 2022

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Hikal Limited

.. Petitioner

vs.

State of Maharashtra and ors.

.. Respondents

Mr. Janak Dwarkadas, Senior Advocate, Mr. Amit Desai, Senior Advocate a/w Mr. Akshay Patil a/w Mr. Gopala Krishna Shenoy a/w Mr. Bhuvan Thakker a/w Mr. Yash Sutaria a/w Mr. Harsh Mehta i/b. Malvi Ranchoddas & Co. for petitioner.

Mr. P.P. Kakade, Government Pleader a/w Ms. R.A. Salunkhe, AGP for respondent no.1 (State).

Ms. Sharmila Deshmukh for respondent nos. 2 to 4 (MPCB).

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

DATE : JUNE 23, 2022.

P.C. :

1. This writ petition questions an order dated April 22, 2022 of the Maharashtra Pollution Control Board (hereafter "Board", for short). The operative portion of the order reads as follows: -

"AND WHEREAS, it has been noticed that you have manufactured Fenamidone @ 156.2 MT in FY 2021/22, which is more than the consented limits, thereby violated the consent conditions. Further, due to manufacturing of higher quantity of Fenamidone, additional quantity of by-product namely Sodium Hydro Sulphide (NaHS) is generated resulting violation of consent conditions.

AND WHEREAS, the Board has imposed conditions No. 14 in the Consent to Operate i.e. to obtain affidavit from vendors stating that the by-product purchased from PP is used as raw material in their respective industries. However, from the record it has been observed that, you have sold the by-product to M/s. Sangam Enviro Pvt. Ltd., Village Dasharath, Vadodra, Gujarat which is not actual user of Sodium Hydro Sulphide (NaHS) & not utilizing purchased material as a raw material in their production process. This indicates that, you have sold by-product to the unauthorized party & violated the consent condition.

AND WHEREAS, you have not monitored the transportation of by-products through self-monitoring through Web-Based GPS tracking system and non-submission of self-monitoring report to MPCB.

AND WHEREAS, in view of the continuous non-compliance, the consent condition of manufacturing of by-product Sodium Hydro Sulphide is hereby revoked, as it is categorized as hazardous waste and the Bank Guarantee of Rs.30 Lakhs is hereby forfeited.

NOW, THEREFORE, you are hereby directed to stop manufacturing activities safely within a period of 15 days, as your manufacturing reactions requires 15 days to complete. Further you are also directed to immediately stop the charging of fresh raw material."

2. The aforesaid order of the Board was preceded by a show cause notice dated January 14, 2022 whereby the petitioner was called upon to explain:

- "(i) Why your consent shall not be refused/reject/revoked;
- (ii) Why your activity shall not be closed down forthwith;
- (iii) Why competent authority shall not be directed to disconnect your units Electric/Water supply; and

(iv) Why necessary legal action shall not be initiated against you.”

3. After receiving the impugned order dated April 22, 2022, the petitioner submitted two representations dated April 29, 2022 and May 16, 2022 (Exhibit CC-2 and II, respectively), whereby it was prayed that the closure order be revoked. The petitioner conveyed thereby that it had rectified and addressed the purported defaults and breaches that the Board had alleged, resulting in issuance of the impugned order. Since the representations were not considered, the petitioner has prayed for quashing of the impugned order dated April 22, 2022 in this writ petition dated May 31, 2022.

4. On June 10, 2022, when the writ petition was taken up for consideration, the following order was passed upon hearing learned advocates for the parties: -

“1. List the writ petition on **20th June 2022**.

2. In the meanwhile, the Maharashtra Pollution Control Board shall proceed to consider the petitioner’s representations dated 29th April 2022 and 16th May 2022 and place the resultant decision before us by the returnable date.

3. In the event the representations are favourably considered, pendency of the writ petition would not preclude the Board to permit the petitioner to act on such order.”

5. In deference to the aforesaid order, the Board gave a personal hearing to the petitioner on June 15, 2022. After hearing the petitioner and upon consideration of all relevant materials, the Board conveyed to the petitioner by its letter

dated June 16, 2022 as follows: -

“***

Though you have taken corrective measures to comply with consent conditions. The Joint Committee appointed by Hon’ble NGT in O.A. No. 5/2022 has filed report before Hon’ble NGT in compliance of Order dtd. 18/1/2022, which is available on the website of Hon’ble NGT, wherein Committee has assessed environmental compensation and recommended to recover amount of Rs.15.05 crores and amount of Rs.2.13 Crores towards compensation to pay to the next of kin of the deceased and victims in view of the pending order in the report submitted by Committee to Hon’ble NGT in the matter of O.A. No.5/2022 and there is one Writ Petition No.23/2022 filed by Mr. Paresh Parekh against State of Gujarat & Ors. before Hon’ble Court Gujarat, Bench at Ahmedabad wherein you are one of the Respondent. In view of above, Board is not considering your request to issue restart order.”

6. The letter dated June 16, 2022 has been brought on record by the petitioner by filing a further affidavit dated June 22, 2022.

7. It would appear from the said letter dated June 16, 2022 that although the Board reached a satisfaction that the petitioner has taken corrective measures to comply with the consent conditions, permission to restart its plant stood refused on two grounds:

(1) a Joint Committee appointed by the National Green Tribunal (hereafter “NGT”, for short) has filed a report before the NGT in compliance with an order dated January 18, 2022 in O.A. No.5/2022, recommending that penalty be imposed on the petitioner for the sums as indicated therein;

and (2) a writ petition is pending before the Gujarat High Court.

8. We have heard Mr. Dwarkadas, learned senior advocate for the petitioner contend, referring to the petitioner's present grievance, that the Board having found the petitioner to have taken corrective measures and thereby comply with the consent conditions, permission to restart the plant at Taloja could not and should not have been refused on irrelevant grounds. According to him, in view of paragraph 3 of the order dated June 10, 2022, permission to restart the plant ought to have been granted particularly when the report of the Joint Committee is yet to be accepted by the NGT and that no order has been passed by the Gujarat High Court on the writ petition pending before it tying the hands of the Board from granting permission to re-start.

9. Ms. Sharmila Deshmukh, learned advocate for the Board has also been heard. We place on record Ms. Deshmukh's submission that at no point of time prior to the hearing, arranged in pursuance of the order dated June 10, 2022 passed by this Court, was the Board aware of the report of the Joint Committee fixing responsibility upon the petitioner for causing environmental damage and death of individuals pertaining to an earlier incident and recommending that the petitioner is liable on account of environmental compensation as well as compensation to the next of kin of the deceased and the victims. It is her

submission that the Board considered it prudent to await the orders of the NGT upon consideration of the report of the Joint Committee and hence refused permission to the petitioner to re-start the plant at Taloja. Insofar as the second ground is concerned, she has fairly not attempted to support it.

10. We have failed to comprehend as to how the assigned reasons could form the plinth of the Board's decision not to permit the plant of the petitioner to be re-started.

11. If indeed the Joint Committee constituted by the NGT has recommended sums to be recovered from the petitioner, the NGT would be free to consider the recommendations and make an appropriate order determining liability, obviously, upon notice to the petitioner. If the NGT imposes any penalty on the petitioner, either equivalent to the sums recommended by the Committee or in excess of/lesser than what has been recommended, it would be incumbent upon the petitioner to bear such penalty unless of course it obtains a favourable order from the appropriate forum staying/quashing such imposition of penalty. However, in the absence of its acceptance by the NGT, the recommendation of the Joint Committee can never form the basis for non-grant of permission to re-start the plant. Keeping a plant engaged in manufacturing activities under closure despite the satisfaction that corrective measures have been taken by the petitioner to comply with the correct conditions suffers

from arbitrariness and unreasonableness. Once the Board has reached the requisite satisfaction and in view of the order dated June 10, 2022 of this Court, it ought not to have kept the plant under closure on the specious ground that the recommendation of the Joint Committee is pending before the NGT for consideration.

12. We, therefore, find no reason to hold that the first ground for non-grant of permission is valid and legal and hence sustainable.

13. Insofar as the second ground is concerned, though Ms. Deshmukh has not supported it, we are also of the considered view that the same is totally irrelevant and demonstrates an attitude of the Board to keep the plant at Taloja under closure by any means. Pendency of the writ petition before the Gujarat High Court without any order having been passed thereon preventing manufacturing activities at the plant of the petitioner could not have weighed in the mind of Board in the light of the specific liberty granted to it in paragraph 3 of the order dated June 10, 2022 passed by this Court. The Board's action, we are constrained to observe, borders on contempt.

14. In such view of the matter, we dispose of the writ petition with the following directions: -

- (i) The impugned order dated April 22, 2022 stands set aside in view of the subsequent satisfaction reached by the Board that the petitioner has undertaken corrective measures to comply with the consent

conditions.

(ii) The Board is directed to grant permission to the petitioner to re-start manufacturing activities at its plant at Taloja, subject to such reasonable conditions that are required to be imposed with regard to manufacture of phenamidone in accordance with law.

(iii) The Board shall be at liberty to communicate that granting permission to the petitioner to re-start manufacturing activities at its plant at Taloja would be subject to any order passed by the NGT in O.A. No.5 of 2022 based on consideration of the report of the Joint Committee.

(iv) We make it abundantly clear that the NGT shall be at liberty to pass an appropriate order in accordance with law upon consideration of the report of the Joint Committee, without being influenced by this order by which the Board is being directed to permit re-start of manufacturing activities.

(v) It is also made clear that the petitioner shall be bound to comply with the consent conditions and other conditions, if any, imposed on it in terms of this order as well as in the consent to operate/manufacture and if there be any breach of such conditions, the Board shall be at liberty to proceed against it in accordance with law.

(vi) Let the permission in terms of this order be conveyed within a week from date.

15. The writ petition is disposed of. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)