

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 249 OF 2022

Indigo Denim Pvt. Ltd.

-- Petitioner/s

Vs.

Maharashtra Pollution Control Board

-- Respondent/s

Mr. D.V. Chauhan, Advocate for the Petitioner.

Mr. S.S. Sanyal, Advocate for the Respondent.

CORAM : NITIN JAMDAR &
ANIL L. PANSARE, JJ.

DATE : 28 APRIL 2022.

P. C. :

Heard learned Counsel for the parties.

2. By this petition, the Petitioner has challenged the action taken by the Respondent – Maharashtra Pollution Control Board forfeiting the bank guarantee of the Petitioner by communication dated 8 December 2021. The Petitioner has also sought to restrain the Respondent - Board from taking any coercive action in pursuance of the show cause notices dated 12 November 2021 and 18 November 2021, and to restrain the Respondent from insisting on furnishing an additional bank guarantee.

3. The Petitioner is a Textile Manufacturing Unit. The Petitioner was granted Consent to Operate under the Water

(Prevention and Control of Pollution) Act, 1974 (hereafter “Act of 1974”). The permission was necessitated in view of the manufacturing activity of the Petitioner, which involves treatment and disposal system of discharge of sewage or trade effluents. The permission to operate was granted to the Petitioner subject to furnishing of bank guarantees as required.

4. The Petitioner received a copy of the communication dated 8 December 2021 issued by the Maharashtra Pollution Control Board to the Branch Manager, Bank of India, where the bank guarantee was issued. The copy marked to the Petitioner that the bank guarantee of Rs.10 Lakh issued on 28 July 2017 extended and valid up to 26 July 2022 was being forfeited. The same communication called upon the Petitioner to top-up the bank guarantee of Rs.20 Lakh within 15 days. This is the impugned communication along with the prayer for injunction in this petition.

5. Learned Counsel for the Petitioner submitted that preceding this communication, there is no specific order against the Petitioner by the Respondent – Board, and though the bank guarantee has already been forfeited, the Petitioner is without any copy of the order to understand the reason why the impugned action is taken. Learned Counsel submitted that in the absence of the order, the Petitioner is seriously handicapped. Learned Counsel further submitted that though it is correct that the Petitioner has

filed an Appeal under Section 28 of the Act of 1974, in the meanwhile, the Petitioner should be protected since in the absence of any specific order, the Petitioner cannot effectively present its case. It is also submitted that there is no conclusive finding that the Petitioner is committing pollution, and the Petitioner is currently operating an industry, which employs various people.

6. Learned Counsel for the Respondent – Board submitted that the bank guarantee is already been forfeited, and against the very impugned order, the Petitioner has already filed an Appeal. The Petitioner, therefore, can urge all the grounds that are sought to be urged in this petition in the Appeal, which is a comprehensive statutory Appeal. Learned Counsel also submitted that from the Appeal then filed by the Petitioner, it is clear that the Petitioner is fully aware as to why the action is being taken, and the show cause notices itself after giving reasons and made it clear that the action would be taken, and therefore, it cannot be the grievance of the Petitioner when the bank guarantee was invoked.

7. The reply affidavit is filed by the Respondent – Board, wherein it is stated that the show cause notices were given to the Petitioner on 24 July 2017, 9 January 2018, 12 November 2021, 18 November 2021 and 8 December 2021.

8. Learned Counsel for the Respondent – Board submitted that the Appeal will be decided on its own merits and no interim order should be granted or continued.

9. We have perused the Appeal memo of the Petitioner. The Appeal memo is extensive. It takes up various grounds on facts. The Petitioner has sought to controvert the assertions of the Respondent – Board and has also referred to the show cause notices including the proposed directions dated 12 November 2021.

10. As regards the bank guarantee, the same is already been forfeited, and therefore, that aspect of the matter will be considered in the Appeal.

11. As regards the copy of the order, the show cause notices and the communication dated 12 November 2021, which were the proposed directions, were itself an order that would come in operation in default of the Petitioner removing the shortfalls, and consequently, the action of invocation of the bank guarantee has been taken. According to the Respondent, the show cause notices and the proposed directions itself were sufficient communications. This aspect also will be considered in the Appeal.

12. Now what remains is the interim arrangement till the pendency of the Appeal.

13. Learned Counsel for the Petitioner states that the ex-parte ad-interim order, which was granted at the time of issuing notice, whereby it was directed that no coercive action such as closure of the production unit of the Petitioner and submission of top-up guarantee be taken until further orders, be continued.

14. The Board had also taken various actions in respect of the units similarly situated as the Petitioner, and it is not that the action is being taken only against the Petitioner. In the reply, it is stated that the Petitioner has failed to achieve Zero Liquid Discharge condition imposed in the Consent to Operate dated 25 June 2019. A visit was conducted on 19 July 2021, wherein effluent discharge from the Petitioner's factory was tested, which founds percentage of Total Dissolved Solids (TDS) as high and beyond permissible limit. It was found that the effluent was accumulated into the storm water drain. The Effluent Treatment Plant was under shutdown condition and the Multi Effect Evaporator was also shutdown. The dying colour was found stored on the open ground and untreated effluent line leaked into the storm water drain. To these assertions of the Respondent – Board, the Petitioner replied and stated that the leakage was minor and gave justification. Again, the inspection was carried out on 10 February 2022 on a complaint, and thereafter, action has been taken.

15. Firstly, the interim order was an ex-parte ad-interim order. Now the Respondent has appeared and filed reply affidavit, placing on record the factors, which we will have to consider to decide the interim arrangement.

16. The establishment of Board under the Act of 1974 is to prevent the pollution, which is in larger interest. The

Respondent – Board has stated that the action is taken against various units similarly situated as the Petitioner. We cannot infer any malafide on the part of this Board, who is doing statutory duty to prevent the pollution.

17. There cannot be an order permitting the Petitioner to carry out an activity which the Pollution Control Board claim lead to water pollution, unless a contrary finding is received, which will be done in the statutory Appeal. Such order will be against public interest, and therefore, we are not inclined to continue the ad-interim order.

18. Since we are not continuing this part of the interim order, it would not be necessary for the Petitioner to furnish the top-up bank guarantee till the outcome of the Appeal.

19. Accordingly, the Writ Petition is disposed of by directing that the Appeal filed by the Petitioner be decided early.

20. Interim order of ‘no coercive steps’ is vacated.

21. The learned Counsel for the Respondent – Board states that the Appeal would be decided within a period of four weeks from today. The statement is accepted.

22. It is clarified that the observations made in this order while considering the interim arrangement are in the context of

consideration of request for continuation of ad-interim order, the Appeal will be decided on its own merits.

[ANIL L. PANSARE, J.]

[NITIN JAMDAR, J.]