

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-32788 of 2022
Date of Decision: 29.07.2022

M/s NMR Phyrochem Private Limited and others

---Petitioners

versus

Haryana State Pollution Control Board

---Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Chirag Wadhwa, Advocate
for the petitioners

VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of Complaint No. 4 dated 26.05.2021 titled as “Haryana State Pollution Control Board vs. M/s NMR Phyrochem Private Limited and others” registered at the instance of the respondents (petitioners herein) under Section 15 read with Section 19 of the Environment Protection Act, 1986 as well as the summoning order dated 26.05.2021 (Annexure P-8) passed by the Special Environment Court, Kurukshetra and all other consequential proceedings arising therefrom. Furthermore, prayer for staying the proceedings in the aforesaid complaint has also been made.

Learned counsel appearing for the petitioners has made the following submissions:-

1. That the Government has already allowed the petitioners to carry on operations vide endorsement No. 16/14/2020-3

ENV. dated 11.11.2020 permitting the units engaged in the business of manufacturing Formaldehyde and as such, institution of the complaint runs contrary to the *ex post facto* approval granted by the Government.

2. That the proceedings have been instituted in violation of Sections 15 and 19 of the Environment Protection Act, 1986, however, the same was not a condition imposed at the time when the petitioners were granted Consent to Establish vide order dated 05.04.2018.
3. That the *ex post facto* approval protects legal action only against the units against whom complaints had already been filed, hence, the approval does not permit the department from instituting complaint after approval. Since the complaint has been instituted after 10.11.2020, the same is without authority.

I have heard counsel for the petitioners and have gone through the records of the case.

In reference to the first argument pertaining to the *ex post facto* approval claimed to have been granted by the Government of Haryana, it is necessary to refer to the relevant extract of the aforesaid approval bearing Endorsement No. 16/14/2020-3 ENV. dated 11.11.2020 and the same reads as under:-

“Whereas, the government has carefully considered their request and the competent authority has decided that these units shall be allowed to continue their operations for a period of six months, without prejudice to any legal action taken

against the violations committed by them, by the competent authorities, with the conditions that they will immediately apply for Environmental Clearance from the competent authority and provide the proof of such application within 60 days from the issuance of this communication to Environment and Climate Changes Department and to Haryana State Pollution Control Board.”

A perusal of the aforesaid shows that the industrial units have only been allowed to continue their operations for a period of six months and that even the said approval is without prejudice to any legal action taken against the violations committed by them. It would be incomprehensible to accept the argument that once the appropriate Government, while granting *ex post facto* approval thought it proper not to grant any exemption against the violating units, it actually intended not to protect institution against further legal action who were violators of law. If the same would have been the intent, the said intent would have been duly reflected in the aforesaid order. The immunity from the process of law has to be express and unambiguous and not on the strength of some suggestive interpretation.

While referring to the second argument as to whether compliance of the mandate of the Environment Protection Act, 1986, was required or not, the relevant conditions incorporated in the Consent to Establish dated 05.04.2018 (Annexure P-1), are extracted hereinbelow:-

“5. The applicant will obtain consent under Section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 and under Section 21/22 of the Air (Prevention & Control of

Pollution) Act, 1981 as amended to-date-even before starting trial production.

6. The above Consent to Establish is further subject to the conditions that the unit complies with all the laws/rules/decisions and competent directions of the Board/Government and its functionaries in all respects before commissioning of the operation and during its actual working strictly.”

A perusal of the aforesaid conditions incorporated in the Consent to Establish clearly show that the industrial unit was required to comply with the laws/rules/decisions and the directions issued by the competent authority before commissioning of the operation of the unit and during its actual working. The aforesaid condition, thus, mandated the petitioners to ensure compliance of the provisions of the Environment Protection Act, 1986, as well, amongst other laws applicable. It cannot be construed that merely because the terms and conditions did not specifically mention the requirement to comply with the provisions under the Environment Protection Act, 1986, the industrial unit is allowed to carry on operations by violating the mandatory notifications and statutory provisions applicable to them under applicable statute.

In so far as the third argument of the petitioners is concerned, the same fails to convince this Court. Merely because the government had allowed the industrial units concerned, without prejudice to the legal proceedings already initiated cannot be construed as a prohibition against institution of complaints after the date of approval even though the violation pertains to the same period. The decision does not prohibit the institution of

the complaint for the violations. The petitioner cannot be treated any differently than the other similarly placed accused merely because the complaint against the petitioner was delayed.

The petitioner cannot claim ignorance of the applicable laws. Even otherwise, even if such a condition is not specifically stated in an approval, every person (individual or juristic) is still bound to be compliant of the Statute and Statutory provisions.

Besides, the other requisite approvals were to be obtained before commencing of operations as well as during its actual working. Hence, the Consent to Operate was to be obtained before commencing production. It is not disputed by the learned counsel representing the petitioners that no such consent was obtained.

Further, the very fact that the industrial units have been allowed to continue their operations without prejudice to any legal action clearly shows that the intent of the Government was to the contrary. Learned counsel appearing for the petitioners has failed to refer to any statutory provision or any judicial precedent to support and supplement his argument.

A parting reference was also made the order dated 22.08.2017 in CRM-M-30744 of 2017 titled “Venod Kumar Sharma and another vs. Chandigarh Pollution Control Committee Chandigarh” to contend that similar controversy is already pending consideration before this Court.

A perusal of the aforesaid order shows that the same relates to some *ex post facto* consent granted on 28.12.2016 and pertains to compliance of the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981. The *ex post facto* approval in the present case is altogether of a

different date. Besides, the aforesaid matter relates to Chandigarh Pollution Control Committee and not to the State of Haryana. Learned counsel for the petitioners has also not been able to point out any similarity in the controversy involved in both the cases, more so, when the said complaint had been initiated against violation of the provisions of Water and Air Pollution Acts, whereas the complaint in hand relates to non-compliance of the provisions of the Environment Protection Act, 1986.

In view of the above and considering that the learned counsel appearing for the petitioners has not been able to point out any illegality in the order of summoning or in the institution of the proceedings by the competent authority, the present petition is devoid of merit and is thus dismissed.

(VINOD S. BHARDWAJ)
JUDGE

29.07.2022

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes