

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39588-2022

Date of Decision: 17.01.2023

M/s Cosmos Enterprises & Anr.

... Petitioners

VS.

Chandigarh Pollution Control Committee

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Mahender Pal Singh, Advocate for the petitioners

Mr. JS Toor, Advocate for the respondent

Sandeep Moudgil, J.

The petitioners, *inter alia*, seek quashing of the complaint titled as “Chandigarh Pollution Control Committee vs. Cosmos Enterprises” bearing No.NACT/2786/2017 under Sections 25/44/49 of the Water (Prevention and Control of Pollution) Act, 1974 and under Sections 37/43 of the Air (Prevention & Control of Pollution) Act, 1987 as well as the summoning order dated 06.09.2017 (Annexure P7) passed by JMIC, Chandigarh vide which the petitioners have been summoned to face trial.

The petitioner No.1 is the firm which carried out business in the name and style of M/s Cosmos Enterprises and petitioner No.2 is the proprietor of the petitioner No.1-unit. The petitioner No.2 took on rent a plot for running a plastic unit components from Plastic Dana. Thereafter in 2015, the petitioners applied and was granted provisional consent on 07.05.2015 (Annexure P2). Vide letter dated 03.08.2015 (Annexure P3), the respondent demanded the additional amount as well as bank guarantee.

A show cause notice/letter dated 04.11.2015 (Annexure P4) was issued under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981, (in short 'the Air Act') and Section 33-A of the Water (Prevention and control of Pollution) Act, 1974 (in short 'the Water Act') vide which the respondent-Committee proposed to issue directions to close the unit forthwith; not to run the unit without prior permission by the CPCC; and to disconnect the water/electricity supply to the unit. An opportunity was granted to the petitioners to show cause within 15 days from the date of its issuance of the notice as to why proposed directions may not be confirmed and why the prosecution proceedings may not be initiated against them. Since it was alleged that the said unit did not take any action for controlling pollution and had neglected the law, order, rules, regulations and bye-laws related to the Pollution Controls Act from the date of establishment of the unit in dispute, a complaint was filed before the CJM, Chandigarh and consequently, vide impugned order dated 06.09.2017 passed by JMIC, Chandigarh, the petitioners were summoned to face trial.

In its complaint, it was averred by the Chandigarh Pollution Control Committee that the petitioners-accused had established and were running a manufacturing unit for wooden furniture along with spray painting at Sector 45, Village Burail, UT, Chandigarh. The said unit was allegedly established and operating without getting consent of the Appropriate Authority i.e. respondent-Committee, as required under Section 25 of the Water Act and under Section 21 of the Air Act. It is further averred in the complaint that the petitioners had applied for consent to operate while submitting application

form on 30.01.2015 wherein it was stated that the petitioners' unit is running since the year 2010.

Learned counsel for the petitioners, *inter alia*, pleaded that the complaint as well as the impugned summoning order are liable to be set aside being not based on law, facts and evidence. The following contentions were raised by counsel for the petitioners:-

- (i) The primary contention of the petitioners is that the summoning order itself is not sustainable as the same has been passed on an assumption that the petitioners are running a manufacturing unit of wooden furniture along with spray painting whereas the unit run by the petitioners pertains to manufacturing of plastic components. In this backdrop, on this ground alone, the summoning order is liable to be set aside.
- (ii) Prior to 2016, for obtaining consent/authorization to establish any industrial unit was primarily based on its size, consumption of the source sand pollution due to emission and effluents and its likely impact on the health was not considered as primary criteria. Subsequently, the said criteria was changed to classification of industries based on pollution index. It was provided that the industries which were manufacturing plastic components and whose pollution index was mentioned as 25 and is shown at Sr.No.32 of the Circular, were listed in green category. It is contended that the manufacturing unit of the petitioners did not discharge any trade effluents and therefore, the unit was placed under green category and as such there is no violation of law.

- (iii) The court below did not take judicial note of the fact that the petitioners had applied for provisional consent to operate their unit but the same application was not considered on merits and resultantly, as per the direction of the Committee, the said unit was closed and as such no cause of action arise in favour of the respondent.
- (iv) The court below did not apply its judicial mind as it is specifically averred that the petitioners were running manufacturing unit of plastic components since 2003 and not the manufacturing unit of wooden furniture along with spray painting as has been wrongly alleged in the summoning order. The said fact duly stands corroborated in the light of the statement of CW1 Anil Kumar, Jr.Scientific Assistant, Office of Chandigarh Pollution Control Committee. Moreover, as per the circular issued by the respondent itself, the manufacturing units of the petitioners is placed in 'green category' and as such there is no violation of Air and Water Acts.
- (v) The impugned complaint could not have been filed by the Junior Scientific Assistant of the Committee as per Sections 3&4 of the Air Act which provides that the Central and State Pollution Control Board could initiate the proceedings. As per Section 6 of the Air Act, there would be no State Board for the Union Territory and the Central Board would exercise its control. It is contended that no State Board shall be constituted for the UTs and the Central Board shall exercise all powers and perform all functions of a State Board. So far as the Chandigarh Pollution Control

Committee is concerned, the Central Board under Section 6 of the Act has deleted powers by the Central Board.

Further, Section 43 of the Air Act provides that no Court shall take cognizance of any offence except on a complaint made by the Board or by any Officer authorized by the Board. It is contended that complaint has been filed by Junior Scientific Assistant who has been authorized by the respondent-Committee vide resolution dated 08.02.2017 passed by the Chandigarh Pollution Control Committee and not by the Central Pollution Control Board as mandated under Section 6 of the Air Act.

- (vi) The further contention of learned counsel for the petitioners is that the complaint is not accompanied by any document/expert report/inspection report that the operation of the manufacturing unit in question was causing any pollution, whatsoever. The complaint has been filed with *mala fide* intention without disclosing the factum of previous application of the petitioners not having been considered and directions were issued to close down the unit knowing very well that the unit was in operation and the same was put in green category.
- (vii) It is submitted that due to act and conduct of the respondent-Committee, the petitioners had been hard hit because they have been made to suffer by the respondent-Committee as the unit has been closed. It is contended that there was not necessity to obtain any consent under the Water and Air Acts because the manufacturing unit was not discharging any effluents.

Learned counsel for the respondent has filed short reply on behalf of the Chandigarh Pollution Control Committee stating that the petitioners have come to this Court with distorting facts and that the procedure adopted by the respondent-Committee is in consonance with the Air & Water Acts. It is asserted that the petitioners had filed an application on 30.01.2015 (Annexure P1) for consent wherein against Sr.No.10 of Part A (month and year of proposed commissioning of the unit) mentioned the date 2007 and perusal of the contents of the application reveals that the unit of the petitioners was registered as a small scale industry on 26.10.2009 which establishes that the unit was set up before filing of the application for consent and thus the petitioners have been rightly prosecuted for violation of Section 25 of the Water Act and Section 21 of the Air Act.

Learned counsel for the respondent submits that the respondent-Committee under the Chairmanship of Advisor to the Administrator-cum-Chairman, Chandigarh Pollution Control Committee adopted the pattern followed by Haryana State Pollution Control Board and in cases where unit is running without taking consent to establish or operate, closure action will be taken under the Water and Air Acts.

Thereafter, vide 58th meeting of the Committee, 3 months' time was granted as one time opportunity for all such industries running without obtaining the consent to establish. On 24.08.2016, it was decided to take action against the violators as per the provisions of Water Act and Air Act. It is urged that the concept of giving consent to establish/operate was adopted by the respondent in line with the procedure adopted by the State Pollution Control Boards.

Mr. Toor further pleaded that the act of granting of provisional consent in the year 2015 to the petitioners does not amount to ratification of the past violation for establishing the unit without prior consent in terms of Section 25 of the Water Act and Section 21 of the Air Act and therefore, the petitioners are liable to be punished under Section 37 of the Air Act which provides for penalty of each such failure to comply with the provisions of Section 21 and 22 of the Air Act.

It is the case of the respondents that the petitioners have approached this Court on vague and baseless ground. Once it is proved that petitioners have committed the offence by establishing and operating the unit without having any consent to establish and operate, the complaint cannot be quashed as it would inculcate and perpetuate injustice to the public at large as has been held in **Jeffery J.Diermeier & Anr. Vs. State of West Bengal & Anr. 2010(3) RCR (Crl.) 183.**

As per Section 6 of the Air Act, it is provided that in relation to any UT, the Central Board may delegate all or any of its powers and functions to such person or body of persons as the Central Government may specify. In this regard, the respondents submitted that “all” qualifies empowerment of powers and functions to CPCC in the present case as CPCC has been authorized by CPCB which does not amount to sub-delegation of powers and as such Section 43 of the Air Act has not been violated as the requirement of Section 43 of the Air Act is only an authorization by the Board. In this regard, reliance has been placed on Karnataka High Court judgment in **Nitin Majumdar vs. State of Karnataka, 2007 (4) KarLJ 569.**

Having heard learned counsel for the parties and after going through the record, this Court is of the considered view that the submissions raised by the petitioners merits acceptance.

In ***Pepsi Foods Limited Vs. Special Judicial Magistrate, (1998) 5 SCC 749***, the Supreme Court has held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have a criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Supreme Court negated the contention that the grounds taken by the petitioner in that case for quashment under section 482 CrPC, can well be looked into by the trial court, at the stage of framing charges and held that “*no doubt the Magistrate can discharge the accused at any stage of the trial, if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 CrPC or Article 227 of the Constitution to have the proceedings quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial*”.

In this case, the court below failed to appreciate that for all intents and purposes, the earlier categorization was changed and the classification of the industries was based on pollution index. As per the circular, those industries which were manufacturing plastic components were listed in green category and their pollution index was mentioned as “25” and at Sr.No.32. The manufacturing unit of the petitioners did not discharge any trade effluents and

as such the same was placed in green category since there was no violation of the provisions of the Water Act and the Air Act. Moreover, the petitioners had closed their units and in such situation, the filing of the complaint case against the petitioners was completely uncalled for. The same has in effect resulted in an abuse of process of law.

In so far as the petitioners' contention that authorization granted by the respondent-Committee is not in conformity with the provisions of the Acts, learned counsel for the respondent averred that the same is unsustainable as CPCC was constituted by the Central Govt. in the year 1991 for exercising powers conferred under Section 4(4) of the Water Act and Section 6 of the Air Act and the Central Pollution Control Board had delegated its powers to CPCC vide notification dated 15.03.1991 and vide notifications dated 23.10.2002 and 28.04.2015 issued by CPCB, the respondent-Committee was re-constituted. As per Section 4(4) of the Water Act and Section 6 of the Air Act, powers and functions have been empowered to such person or body of persons as the Central Govt. may specify i.e. the respondent-Committee. In the present case, the Junior Scientific Officer has been authorized by the respondent-Committee to file complaint which does not amount to sub-delegation of powers as the respondent-Committee has been authorized to function by the Central Pollution Control Board.

Learned counsel for the petitioners have referred to the application form (Annexure P1) vide which the petitioners have applied for Consents/Authorization under Section 25 & 26 of the Water Act, under Section 21 of the Air Act and Authorization/renewal of authorization under Rule 5 of the Hazardous Wastes (Management, Handling & Transboundary Movement)

Rules, 2008. As per Column No.13 to 15 of the said application, the information supplied by the petitioners regarding manufacturing unit has been provided as “*plastic components*”. The petitioners, in Column No.14 have mentioned as “*plastic dana*” against the information sought regarding the list of raw materials and process chemicals. The relevant portion of the said application form reads under:-

13.	List of products and by-products manufactured in tons/month, kl/month or number/month (given figure corresponding to maximum installed production capacity)	Manufacturing of plastic components (2 tons) month
14.	List of raw materials and process chemicals with annual consumption corresponding to above stated production figures in tons/month or kl/month or numbers/month	Plastic Dana (2 tons) Month
15.	Description of process of manufacture of each of the product showing input, output, quality and quantity of solid, liquid and gaseous wastes, if any from each unit process	Molding -> Packing Though plastic molding M/C

In pursuance to the above application, the respondent-Committee granted Provisional Consent vide letter dated 07.05.2015 (Annexure P2) to M/s Cosmos Enterprises, 87, Indl. Area, Ph-II, Chandigarh and in Clause-2 of the said Provisional Consent, it was incorporated that “*The Consent is valid for Manufacturing of plastic components*”. Meaning thereby that the respondent-Committee granted provisional consent to the unit of the petitioners which was **running manufacturing unit of plastic components.**

So much so, a perusal of the statement dated 21.05.2022 of CW1 Anil Kumar, Jr.Scientific Assistant made before CJM, Chandigarh makes it evidently clear that M/s Cosmos Enterprises is running the business of manufacturing of plastic components since 2003. Even in his cross-examination, the said witness categorically admittedly that the unit is under Green category and that he does not know whether any pollution effluent was

coming out from the unit or not. Undoubtedly, it is clear that the complaint has been filed by the respondent-Committee in a mechanical manner and without carrying out proper spot inspection. There cannot thus be any gainsaying that the summoning order has been passed without proper scrutiny of material on record and application of judicial mind inasmuch as the petitioners are admittedly running the manufacturing unit of plastic components and not the manufacturing unit for wooden furniture along with spray painting which was the basis for passing of the impugned summoning order.

For the reasons aforestated, this petition is allowed and the complaint dated 24.04.2017 (Annexure P6) as well as the summoning order dated 06.09.2017 (Annexure P7) are set aside.

17.01.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No