



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-30701 of 2024 (O&M)

Reserved on: 20.11.2024

Date of Order: 04.12.2024

Experion Developers Private Ltd.

.Petitioner

Versus

Haryana State Pollution Control Board and another

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: M. Rajeev Anand, Advocate
Mr. Vardit Jain, Advocate, for the petitioner.

Mr. Deepak Balyan, Addl. A.G., Haryana

ANIL KSHETARPAL, JUDGE

1. FACTUAL BACKGROUND

1.1. This petition has been filed by the developer of a Group Housing Residential Complex at Gurugram, Haryana, against whom the impugned order has been passed under Section 33A of the Water (Prevention and Control of Pollution), Act, 1974, (hereinafter 'the Water Act, 1974').

1.2. It is evident from a reading of the impugned order that directions have been issued to the petitioner to deposit environmental compensation of Rs.19,87,500/- within a period of 30 days on account of damages caused by the Unit to the environment. A perusal of show cause notice, Annexure P-25, issued on 15.02.2024, shows that discharge of waste water through a pipeline in the agricultural land is the cause for imposition of environment compensation on polluter pays principle.

2. **ANALYSIS AND DISCUSSION**

2.1. The learned counsel representing the parties have been heard on the question of admission as well as final disposal of the petition.

2.2. On being confronted with the availability of alternative remedy under Section 33-B of the Water Act, 1974, the learned counsel representing the petitioner submits that there is no provision for environmental compensation which is based on a judge made law. He submits that the petitioner is not in control of sewerage treatment plant which is now being managed by the Residents Welfare Association. He submits that the present case shall not be covered by Section 33B(c) of the Water Act, 1974.

2.3. Appeal to such authority (as the State Government may think fit to constitute) is maintainable against the Board's orders passed under Section 25, 26 and 27 of the Water Act, 1974. The learned counsel representing the petitioner admits that Section 26 and 27 of the Water Act, 1974 are not applicable in the present case. However, under Section 33A, the Board has the power to issue any direction to any person/officer or authority including the power to direct the closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other service. The phrase “issue any direction” in the context of Section 33A of the Water Act, 1974, has been explained in the explanation while using the word “includes” which proves that power to issue directions is not restricted to the words used in the explanation. The use of word “include” itself indicates that the expression “any directions” has a wider meaning so as to include direction to pay environmental compensation. The directions issued under Section 33B, by the Board are appealable before National Green Tribunal (“NGT”).

2.4. The learned counsel representing the petitioner has relied upon the decision of Supreme Court in Tamil Nadu Pollution Control Board vs. STERLITE INDUSTRIES (I) LTD. & ORS, 2019 AIR SC 1074, wherein it was *inter-alia*, laid down that if an order is co-jointly passed by the Board under Section 33A of the Water Act, 1974 as well as under Section 31A Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'the Air Act') , then no remedy against such order is available except for filing a petition under Article 226 of the Constitution of India. However, as already noticed in this case, direction has been issued to pay the environmental compensation on discharge of waste water which falls within the scope of the Water Act, 1974. Hence, the petitioner has statutory effective remedy before NGT under Section 33-B of the Water Act, 1974.

3. DECISION

3.1. In view of the above, the writ petition is disposed of with liberty to the petitioner to avail remedy under Section 33-B(c) of the Water Act, 1974, by approaching the NGT, where the petitioner is free to seek interim relief in accordance with law.

3.2. Needless to observe that this court has made no comments on merits of the claim of the petitioner and the NGT will be free to decide the matter independently uninfluenced by observations made by this court.

3.3. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

04th December, 2024

nt

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No