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

WRIT PETITION NO. 269 OF 2025

Gera Developments Pvt. Ltd. & Anr. .. Petitioners

Versus

**The Maharashtra Pollution Control
Board & Ors. .. Respondents**

Mr. Nikhil Sakhardande, Senior Advocate a/w Mr. Pralhad Paranjape, Mr. Manish Kelkar, Ms. Shubhra Paranjape and Ms. Tirtha Pawar for petitioners.

Ms. Jaya Bagwe for respondent nos.1 to 3.

Mr. Ravi Uikey for respondent no.4.

Mr. Jagannath Shankar Salunkhe, Regional Officer, MPC Board, Pune, is present in Court.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
AMIT BORKAR, J.**

DATE: 10th JANUARY, 2025

P.C.:

1. Pursuant to our order dated 8th January, 2025, Mr. Jagannath Shankar Salunkhe, Regional Officer, Maharashtra Pollution Control Board, Pune is present in Court.

2. Rule. Rule made returnable forthwith. With the consent of the learned counsel of the parties, matter has been taken up for hearing and is being decided finally.

3. This petition, invoking our jurisdiction under Article 226 of the Constitution of India, assails the validity of a document dated 10th December, 2024 that has been exhibited at Exhibit "G" and is available at page 111/112 of the writ petition which, though has been described as warning notice, however, by the said letter/document the petitioners have been instructed to submit action taken report, failing which further legal action under the Water (Prevention and Control of Pollution) Act, 1974 (herein after referred to as "the Water Act") and the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "the Air Act") may be taken.

4. Challenge has also been made in this petition to show cause notice dated 30th December, 2024, whereby the petitioners have been required to respond to the non-compliances mentioned therein, failing which the Maharashtra Pollution Control Board (hereinafter referred to as "the Board") may initiate legal action against the petitioner-Unit in accordance with the provisions of the Water Act and the Air Act.

5. Learned senior advocate representing the petitioners has submitted that as a matter of fact the notice dated 30th December, 2024 has been issued for Proposed Directions against the petitioner-Unit, however, the contents of the said letter/notice dated 30th December, 2024 do not satisfy the requirements of the Enforcement Policy notified by the Board, dated 29th February, 2016 which was prepared in compliance of a judgment rendered by the National Green Tribunal, (Western Zone) Bench at Pune in Application No. 30 of 2013.

6. Drawing our attention to Clause 4 of the said

Enforcement Policy, it has been argued that under the said policy five actions are permissible, namely, (a) Warning Notice (WN), (b) Show Cause Notice (SCN), (c) Proposed Directions (PD), (d) Conditional Directions, (e) Conditional Directions and (f) Filing of prosecution. He has further stated that action permissible under the Enforcement Policy, as aforesaid, requires ascertainment of percentage of compliances and in case the percentage of compliances is less than 25%, a warning notice can be issued. He has further stated that in terms of the said policy, where exceedance level is above 25% but such exceedance of non-compliance does not have serious impact on environment, show cause notice can be issued pointing out non-compliance with the observation as to why further necessary action shall not be initiated in the matter in case satisfactory reply to the show cause notice is not given and no satisfactory steps are taken to comply with the show cause notice. As regards Proposed Directions (PD), his submission is that after receipt of notice under Clause 4(b) of the policy is issued, if no steps are taken to comply or where non-compliance and exceedance observed are found to be having impact on environment, Proposed Directions can be issued pointing out exceedance of non-compliance of above 50%. The submission is that notice/letter dated 30th December, 2024 does not mention the percentage of exceedance of non-compliance, in absence whereof the same is bad and vitiated which cannot be acted upon being in violation of the Enforcement Policy.

7. Learned senior advocate for the petitioners has also made certain submissions about the merit of the alleged

compliances made by the petitioner-Unit, however, while considering the issue involved in this petition, the Court is not concerned with the merit of the compliances at this juncture.

8. Learned counsel representing the Board has submitted that the notice/letter dated 30th December, 2024 has been issued under Section 33-A of the Water Act read with Rule 34 of the Water (Prevention and Control of Pollution) Rules, 1975 (hereinafter referred to as "the Rules of 1975"). Drawing our attention to the provisions contained in Section 33-A of the Water Act, it has been argued by the learned counsel representing the Board that in exercise of its functions and powers under the Water Act, the Board may issue any directions in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such directions. Her submission is that power under Section 33-A is subject only to the provisions of the Water Act and to any directions which may be issued by the Central Government. She has also stated that since Section 33-A commences with a non obstante clause, the Board is empowered to discharge its functions subject only to the provisions of the Water Act and the directions issued by the Central Government.

9. Our attention has also been drawn to Rule 34 of the Rules of 1975 which provides that any direction issued under Section 33-A of the Water Act shall be in writing which shall specify the action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given. It also requires the Board to issue a copy of the Proposed Directions to the person, officer

or authority to whom any direction is sought to be issued. Thus, the submission is that the letter/notice dated 30th December, 2024 is referable to the powers of the Board available to it under Section 33-A of the Water Act read with Rule 34 of the Rules of 1975.

10. It has further been submitted that similar provisions exist in Section 33-A of the Air Act and accordingly, letter/notice dated 30th December, 2024 is a statutory notice and it has been issued for fulfillment of the statutory provisions as discussed above.

11. As regards the challenge made to the alleged warning notice dated 10th December, 2024, it has been stated that by the said notice the petitioner-Unit was instructed only to submit action taken report in regard to certain deficiencies/non-compliances mentioned therein and accordingly, the said letter dated 10th December, 2024 is also not referable to the Enforcement Policy.

12. Having heard and considered the submissions made by the learned counsel appearing for the respective parties and having gone through the records available on this writ petition and also the various statutory provisions, we are of the opinion that submission made by the learned senior advocate for the petitioners that the letter/notice dated 30th December, 2024, not being in conformity with the Enforcement Policy is in any manner vitiated or bad in law, is not tenable. As a matter of fact, under Section 33-A of the Water Act, the Board is vested with ample powers to issue any direction in writing to any person, officer or authority and once any such direction is issued, such person, officer or authority is bound to comply

with such directions. For effective and appropriate exercise of powers vested in the Board under Section 33-A, Rule 34 of the Rules of 1975 provides that in case any action is proposed, as contemplated under Section 33-A of the Water Act, the person, officer or authority to whom any direction is sought to be issued is to be served with the copy of the Proposed Directions. In fact, Rule 34 of the Rules of 1975 is couched in a language which manifests that the provisions contain the principles of natural justice for the reason that before taking any action permissible under Section 33-A, the person, officer or authority concerned is to be issued a show cause notice informing the party concerned of the Proposed Directions.

13. As observed above, Section 33-A empowers the Board of very wide powers for the purposes of ensuring implementation of the provisions of the Water Act.

14. The Enforcement Policy, dated 29th February, 2016, in our opinion, mentions certain actions permissible in case of violations by any Unit, however, actions mentioned in Clause 4 of the said policy cannot be said to be exhaustive considering the very wide powers vested in the Board under Section 33-A of the Water Act.

15. We are of the opinion that once reply or explanation to the notice referable to Rule 34 of the Rules of 1975 is issued by the person concerned, the matter is to be considered by the Board at its level to conclude as to what action needs to be taken. On consideration of the explanation submitted by the party concerned to the show cause notice issued under Rule 34 of the Rules of 1975, an opinion is to be formed by

the Board as to the nature of action to be taken in case non-compliances are found and it is at this stage that in case the Board decides to take action under the Enforcement Policy that the procedure as prescribed in Clause 4 (a), (b) (c), (d) and (e) of the Enforcement Policy is to be adhered to.

16. Having held that the letter/show cause notice dated 30th December, 2024, which is under challenge in this petition, is referable to Section 33-A of the Water Act, Section 33-A of the Air Act and Rule 34 of the Rules of 1975, we are of the considered opinion that notice is statutory in nature and has been issued by a competent authority. In absence of any ground of malice, the notice having been issued by a competent authority under a valid power, in our opinion, cannot be interfered with.

17. So far as the challenge to the alleged warning notice dated 10th December, 2024 is concerned, we are of the opinion that the same cannot be said to be warning as is apparent on the bare perusal of the concluding paragraph of the said document wherein the petitioner-Unit was instructed to submit action taken report otherwise it was provided that further legal action would be taken.

18. Thus, for the discussion made and reasons given above, no interference by the Court is required either in respect of the letter dated 10th December, 2024, whereby action taken report sought to be submitted, or in the letter/notice dated 30th December, 2024.

19. The petition, in our opinion, is devoid of merit, which is hereby dismissed.

20. However, we provide that since the last date, in terms of the order passed by this Court on 8th January, 2025, is to expire on 13th January, 2025, the petitioners are permitted time to respond to the letter/notice dated 30th December, 2024 within fifteen (15) days from today. We make it clear that it will be open to the petitioners to take all the pleas while responding to the said letter/notice which shall be appropriately considered by the competent authority of the Board. We further provide that once the explanation/reply to the letter/notice dated 30th December, 2024 is furnished by the petitioners, the petitioners or the representative of the petitioners shall be given an opportunity of hearing by the Board.

21. We also notice that letter dated 30th December, 2024 makes reference to certain documents, which include the complaint received from some organization, dated 25th November, 2024, visit of the Board Official to the petitioner-Unit on 9th December, 2024 and the proposal submitted by the Sub Regional Officer vide his letter dated 30th December, 2024 for legal action against the petitioners. Since the very basis of the show cause notice/letter dated 30th December, 2024 are the documents mentioned therein, therefore, it would be appropriate that petitioners shall be supplied with the copy of the complaint dated 25th November, 2024, report of the visit of the Board Official to the Unit of the petitioners dated 9th December, 2024 and the proposal submitted by the Sub Regional Officer dated 30th December, 2024 for taking legal action, by Monday, 13th January, 2025. In case the learned counsel appearing for the Board tenders the said documents

to the learned senior counsel representing the petitioners in these proceedings by Wednesday, 15th January, 2025, it will be deemed to be sufficient compliance of this direction by the Board.

22. There shall be no order as to costs.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)

PRAVIN
DASHARATH
PANDIT

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by PRAVIN
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