

(2018) 11 J&K CK 0122

In the Jammu And Kashmir High Court

Case No : Other Writ Petition (OWP) No.1209 Of 2016, 1081 Of 2017

Bashir Ahmad Lone @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 30-11-2018

Acts Referred:

Water (Prevention And Control Of Pollution) Act, 1974 — Section 25
Air (Prevention And Control Of Pollution) Act, 1981 — Section 21

Citation : (2018) 11 J&K CK 0122

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : M. Ayoub Bhat, Nissar, Ahmad, Asifa Padroo

Final Decision : Disposed Off

Judgement

1. Petitioner claims to be unit holder of Bandsaw Machine Mill situated at village Takiya Wagam District Pulwama. Petitioner claims that he has been running aforesaid Unit right from the year 2003 under proper licence, issued by Forest Department. His licence was renewed from time to time till 2011. It is stated that he applied for renewal of licence after completing all requisite formalities, but respondents, instead of renewing his licence, directed petitioner to stop operation of said unit. This was done by Deputy Commissioner, Pulwama, vide his communication no.DCP/SH/11/283-85 dated 30th July 2011, whereby Divisional Forest Officer, Shopian, was directed to stop operation of Bandsaw Machine. The aforesaid communication was challenged by petitioner in OWP no.1169/2011. The challenge succeeded and this Court vide order dated 4th October 2013, quashed impugned communication dated 30th July 2011, giving liberty to respondents to proceed in the matter in accordance with law, occupying the field after affording petitioner an opportunity to show cause against proposed action.

2. It is further submitted that while OWP no.1169/2011, was pending consideration and interim order of status quo was in operation, respondent - J&K Pollution Control Board, issued an order dated 30th August 2013, calling upon petitioner to close down the unit. Petitioner challenged aforesaid order passed by

respondent Board in OWP no.1240/2013, which was disposed of by this Court vide order dated 24th September 2013, by providing that respondents will not give effect to order impugned dated 30th August 2013 and fate whereof will depend on the orders to be passed in OWP no.1169/2011. As noted above, OWP no.1169/2011 was subsequently disposed of.

3. Apart from the petitions, reference of which has been made herein above, petitioner had also filed three more writ petitions, bearing OWP no.134/2008, 307/2014 and 427/2014, with a view to avoid adverse orders from respondents with regard to closure of his unit. All these petitions were clubbed together and were dismissed by this Court vide order dated 8th May 2015. The order of dismissal, passed by this Court in aforementioned clubbed matters, was assailed by petitioner by way of three separate, i.e., LPAOW no.99/2015, 109/2015 and 115/2015. A Division Bench of this Court vide its order dated 6th July 2015 dismissed all three appeals. However, the Division Bench, while dismissing the appeals, gave liberty to petitioner to apply to office of Pollution Control Board within two weeks, with a direction to respondent Board to consider such application and pass appropriate orders in accordance with law within two weeks thereafter. It is the grievance of petitioner that instead of considering his case as directed by the Division Bench of this Court, a communication dated 27th June 2015 was issued by Forest Department, directing petitioner to dismantle Bandsaw Unit, which was challenged by petitioner in OWP no.1296/2015, in which it was claimed that this Court passed a direction to the effect that petitioner's structure of Bandsaw Mill would not be demolished. It is, thus, submitted that despite petitioner having approached respondent Board with all requisite formalities having been completed, respondent Board is not considering the matter, as a result whereof petitioner has been made to suffer irreparable loss and injury and he has been deprived of running his Bandsaw Mill. It is in these circumstances that petitioner, feeling aggrieved of inaction on part of respondents, has filed instant petition.

4. Respondents 3&4 (J&K Pollution Control Board) have filed their reply affidavit, in which it is pleaded that petitioner has set up and put in operation a Bandsaw Unit in a predominantly residential area of Village Takiya Wagam, without obtaining consent of respondent Board as warranted under Section 25 of Water (Prevention and Control of Pollution) Act, 1974, and Section 21 of Air (Prevention and Control of Pollution) Act, 1981. It is further submitted that by respondents that in view of non-compliance with provisions of Act of 1974 and Act of 1981, the unit was ordered to be closed by order no.193-SPCB of 2013 dated 30th August 2013, but in due deference to the order passed by this Court, the same was kept in abeyance, so as to enable petitioner to obtain requisite licence from Forest Department. It is, thus, submitted that since Forest Department is yet to grant him licence, as such, the stage for consideration of his request for grant of consent of respondent Board to operate, has not yet reached. It is, therefore, the stand of respondent Board that case of petitioner for consent of Board, shall be decided only after requisite licence in his favour is issued by Forest Department.

5. So far as respondents 1,2,6 to 8 (Forest Department), are concerned, the stand taken in Reply Affidavit by them, is that pursuant to a complaint filed by one, Mohammad Ashraf Ganie of Takiya Wagam, the respondent Board examined the matter and found that unit of petitioner, established in residential area, was source of pollution for neighbouring inhabitants and accordingly took up the matter with Deputy Commissioner, Pulwama, for closure of the unit. It is stated that opinion/communication of Member Secretary of Pollution Control Board with regard to potential of the unit for causing pollution, the seizure of diesel engine of Bandsaw was effected by Deputy Commissioner. Regarding grant of licence, it is pleaded by respondents that case of petitioner in terms of SRO 103 of 2012 has already been submitted by Divisional Forest Officer, Shopian (respondent no.7) to Conservator of Forests, Kashmir, South Circle, Bijbehara (respondent no.6) vide letter no.DFO/SPN/ 549/L dated 20th June 2016. It is, however, not clarified in the Reply Affidavit as to what action has been taken by respondent no.6 on the recommendations of respondent no.7. This in nutshell is the stand of Forest Department taken in Reply Affidavit.

6. Having heard learned counsel for parties, perused the record, I am of the considered view that only right, which petitioner has with regard to establishment and operation of Bandsaw Mill Unit, is right of consideration in terms of SRO 103 of 2012. It is admitted by respondents that case of petitioner for grant of licence to run Bandsaw Mill in terms of aforesaid SRO has already been processed and requisite recommendations have been made by DFO, Shopian (respondent no.7) vide communication dated 20th June 2016, to Conservator of Forests, Kashmir, South Circle, Bijbehara (respondent no.6). It is, thus, for respondent no.6 (Conservator of Forests, Kashmir, South Circle, Bijbehara) and competent authority to take a final decision with regard to grant of licence in favour of petitioner. Respondent Forest Department cannot keep the matter pending inordinately, and a decision in this regard is to be taken without any further waste of time. So far as compliance with provisions of Section 25 of Water (Prevention and Control of Pollution) Act, 1974, and Section 21 of Air (Prevention and Control of Pollution) Act, 1981, is concerned, the same will be looked into by J&K Pollution Control Board, once licence is granted in favour of petitioner by Forest Department and matter is forwarded to Pollution Control Board for the purpose. Needless to say, that Bandsaw Mill, which has potential of creating air, noise and water pollution, cannot be allowed to be established and operated without the consent of J&K Pollution Control Board. In these circumstances, this petition is disposed of by directing respondents, particularly, respondent no.6 (Conservator of Forests, Kashmir, South Circle, Bijbehara), to immediately and forthwith take a decision on the request of petitioner for grant/renewal of Bandsaw Mill Licence of petitioner in light of recommendations received by him from DFO, Shopian, vide letter no.DFO/SPN/549/L dated 20th June 2016. Let a final decision in this regard be taken by Conservator of Forests, Kashmir, South Circle, Bijbehara, or by competent authority within a period of six weeks from the date certified copy of this order is made available to them. It is

further provided that in case petitioner fulfils requirements as laid down in SRO 103 of 2012, and is otherwise found entitled to issuance of licence, requisite order in this regard shall be passed and matter shall be referred to J&K Pollution Control Board for grant of its consent. Needless to say, that J&K Pollution Control Board, immediately after grant of licence issued in favour of petitioner is conveyed, shall consider the case of petitioner for grant of consent under the provisions of Water (Prevention and Control of Pollution) Act, 1974, and Air (Prevention and Control of Pollution) Act, 1981, within a period of six weeks thereafter. Disposed of.

7. Record be returned to learned counsel for respondents.