

(1999) 08 AHC CK 0075
In the Allahabad High Court
Case No : Writ Petition No. 3178 of 1999 (M/B)

Bhikhari Lal Jai Prakash Dairy

APPELLANT

Vs

U.P. Pollution Control Board and Others

RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 33A
Water (Prevention and Control of Pollution) Rules, 1975 — Rule 34

Citation : (1999) 08 AHC CK 0075

Hon'ble Judges : Ikram-Ul-Bari, J and Pradeep Kant, J

Judgement

1. The main grievance of the petitioner in the present writ petition is that without issuing notice under Rule 34 of the Water (Prevention and Control of Pollution) Rules, 1975, final orders, issuing directions for installation of Effluent Treatment Plant (E.T.P.) have been issued by the Member Secretary, U.P. Pollution Control Board. It has been provided in that order that E.T.P. should be installed within fifteen days which should conform with the standards laid down in the E.P. Act, failing which orders for closure of the industry shall be passed. Admittedly, the petitioner did not install the E.T.P. and, therefore, as a consequencee of the said direction issued by means of order dated 20th February, 1999, the industry has been closed by means of order dated 3151999, Annexure1. The further grievance of the petitioner is that they had requested the department to give them the standards which are required to be maintained by the industry which is being run by the petitioner, but the opposite parties have failed to provide the prescribed standards. Learned counsel for the petitioner further drew our attention to the recitation made in the impugned order dated 3151999 that inspection was made by the competent officer of the Pollution Control Board on 531999 and it was found that E.T.P. was not installed in the petitioner unit as prescribed under the Water (Prevention and Control of Pollution) Act, (for short, the Act) nor there was any provision for treatment of the effluent. The order recites that it was also found that trade effluent is being discharged which was not upto the mark. In this connection learned counsel for the petitioner drew our attention to the report

dated 5th March 1999 which has been made the basis of the impugned order, a copy of which has been filed by the Pollution Control Board as Annexure 4 to the counteraffidavit. In this report it has been mentioned that at the time of inspection since the industry was not being run, the effluent could not be collected. In view of this report it is strange that the impugned order has been passed by making an observation that the effluent which was found was not upto the standard whereas in report dated 5.3.1999 it is stated that no sample could be collected because the industry was not being run. This itself is sufficient to quash the order.

2. We further proceeded to enquire from Sri Kamlesh Singh, learned counsel for the Pollution Control Board as to when the inspection was actually made upon which he relied upon the report dated 2nd May, 1996 which has been filed along with the counter affidavit, but failed to indicate as to what action was taken after submission of said report till date except the passing of the impugned order and issuance of direction under Section 33A of the Act. There is no reference of this report in the impugned order nor the same appears to have been taken into consideration. With a view to put in some claim before this Court, this report appears to have been filed by the U.P. Pollution Control Board along with the counteraffidavit. It is obvious that this report after its submission, was not taken into consideration and was not the basis of the impugned order and, thus, it has no relevancy so far as the present controversy is concerned.

3. So far as the argument of the learned counsel for the petitioner that no prior notice as required under Rule 34 of the Rules was given is concerned, learned counsel for the Board relied upon the notice/directions issued on 20th February, 1999 and asserted that this direction should be treated as show cause notice in view of the directions issued by the Supreme Court in Writ Petition No. 725 of 1994. Rule 34 of the Rules provides that any direction sought to be issued under Section 33A of the Act shall be in writing. It further lays down under subrule (3) that the person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction, Rule 34 also provides that apart from closure of the industry, many more directions can be issued. Learned counsel for the petitioner submitted that the directions which is contained in direction dated 20th February, 1999 do not invite the petitioner to file objection against the proposed direction for installing E.T.P. It rather gives a positive direction that proper effluent treatment plant should be installed within fifteen days from the date of the issuance of the notice, i.e. 10th March 1999 and to submit report accordingly failing which closure of the industry can be ordered. Obviously, this direction was for installation of effluent treatment plant and it cannot be treated to be a notice under Rule 34 of the Rules framed under the Act.

4. Provisions of issuing notice before asking the industry to comply with the

specific directions, which may include closure of the industry also, has been provided in the Rules with a view to give an opportunity to the industry to show cause that the industry is not causing pollution or it does not fall under the clause "industry" as defined under the Act and once this opportunity is given, the matter is to be considered on receipt of the reply and thereafter if the authority is satisfied by collecting sample or otherwise that there is necessity to issue directions as provided under Rule 34 of the Rules, then alone the authority will be at liberty to take action under Section 33A of the Act. The aforesaid right of the industry cannot be taken away simply because the authority concerned pass? order under Section 33A, without issuing any prior notice. Such an order would obviously be in violation of the provisions of the Act and the Rules framed thereunder and also in violation of principles of natural justice since without affording an opportunity to show cause, no directions can be issued unless it is covered by some of the exceptional clause. In the present case, no such reason has been recorded as to what necessitated the authority to issue final directions under Section 33A of the Act without issuing any notice. It is pertinent to mention it here that when the report was submitted in the year 1996, no orders were passed and thus there can be no exceptional reason existing for issuing the direction in a haste. Moreover, as we have found earlier that in the report of the date 5th March 1999, it was mentioned that no sample could be collected because the industry was not being run therefore, passing of the order for closure of the industry is absolutely on extraneous considerations and there is no material for this direction to be relied upon the authority concerned. We, therefore, find that the impugned order dated 31st May 1999 directing for closure of the industry is in contravention to the provisions of the Act and the Rules framed thereunder and the prescribed procedure and it effects the civil rights or any such rights of carrying out a business, profession or industry.

5. In the result, the writ petition is allowed and the impugned order dated 31st May 1999 and the directions issued on 20th February 1999 are set aside. A writ of certiorari be issued accordingly.

6. Before parting with the judgment we are of the view that directions for closure of an industry cannot be issued without issuing notice and without taking proper action in accordance with the provision of the Act and the Rules framed thereunder, but at the same time if an industry is causing pollution and is not being run in consonance with the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Rules of 1975, the same cannot be permitted to go unchecked. In this view of the matter we direct that the petitioner industry shall be permitted to run and the U.P. Pollution Control Board shall take immediate steps for collecting sample in accordance with the Rules and shall analyse the sample and after taking a report, if it is found that the sample is not in accordance with the standards, they shall take necessary action including action under Rule 34 or issuing direction under Section 33A of the Act, as the case may be. The premises of petitioner industry, if they have been sealed, shall be unsealed and unlocked and the petitioner shall be allowed to run the industry.

We expect and hope that the Board will not shirk its responsibility of analysing the sample without any delay. Ordered accordingly.