

(1985) 08 DEL CK 0043

In the Delhi High Court

Delhi Bottling Co. Pvt. Ltd. and Another

APPELLANT

Vs

Central Board for the Prevention and Control of Water
Pollution

RESPONDENT

Date of Decision : 07-08-1985

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 21, 21(1), 21(2), 21(3), 21(4)

Citation : AIR 1986 Delhi 152

Hon'ble Judges : H.C. Goel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.C. Goel, J.—M/s. Delhi Bottling Co. Pvt. Ltd. (for short the "Company"), petitioner has been carrying on the business of preparation of soft drinks under the trade names Gold Spot, Limca, Thums Up, Rimzim and Soda Water etc. at their factory premises No. 60, Shivaji Marg, New Delhi. They are discharging trade effluents which ultimately fall in the stream i.e. river Yamuna. Shri S. K. Arya, petitioner No. 2, is the Plant Manager of the Company. The Company duly obtained consent order under the provisions of Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 (for short "the Act"). A complaint u/s 33(1) of the Act was filed by the Central Board for the Prevention and Control of Water Pollution, respondents, against the petitioners. It was alleged that the Company has neither put up the treatment plant, nor has started any preliminary step in that regard. It was further alleged that the sample of the trade effluents of the Company was lifted by the officials of the Board on May 16, 1984 in the presence of Mr. D. L. Khosla, a representative of the Company, and the sample on analysis has been found as not conforming to the parameters of the consent order of the Company. It was prayed that the Company be restrained from causing pollution by discharge of trade effluents till the company sets up the required treatment plant and conforms to the quality of trade effluents according to the parameters as provided in the consent order. Shri Naipal Singh,

Metropolitan Magistrate, Delhi, after obtaining the reply of the petitioners to the complaint of the respondents and after hearing the parties, passed the impugned order dt. Aug. 8, 1984 accepting the application of the respondents and restraining the petitioners from causing pollution of the stream by discharging the trade effluents till the required treatment plant is set up and conforming the quality of trade effluents according to the standards prescribed by the Board in its consent order as renewed on November 26, 1981. Feeling aggrieved by this order of the learned Metropolitan Magistrate the petitioners have filed this petition u/s 482, Cr. P.C.

2. I do not find any force in this submission. The Scheme of the Act shows that Section 21 is a provision of general application governing the matter of lifting of samples in all cases including the cases for the purpose of obtaining an order u/s 33 of the Act. The heading of Section 21 is "Powers to take samples of effluents and procedure to be followed in Connection therewith." Section 21(1) incorporates the powers of the State Board or of the officers of the State Board with regard to the lifting of samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from any place into any such stream or well or samples of any sewage or trade effluent which is passing from or over any plant or vessel or from over any place into any such stream or well. Sub-section (2) of Section 21 states that the result of any analysis of a sample of any sewage or trade effluent taken under Sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of Sub-sections (3), (4) and (5) are complied with. The proceedings u/s 33 of the Act are obviously legal proceedings under the Act. It is thus clear that the sample must be lifted in accordance with the provisions of Section 21 of the Act when only its analysis could be admissible in evidence in the proceedings u/s 33 of the Act. Further, Sections 32 and 33 are the only two provisions of the Act where under samples may be lifted by the Board. Whereas Section 32 provides for emergent cases, Section 33 is the normal provision empowering the Board to make applications to courts for restraining apprehended pollution of water in streams or wells. So to say that for taking action u/s 33 which is a normal provision in which the lifting of samples is involved that the provisions of Section 21 are not operative is wholly fallacious.

3. We have now to see as to how far the learned Magistrate was right in coming to the conclusion that though the provisions of Section 21 were applicable to the case, yet the sample was not required to be divided into two parts and got analysed as per the provisions of Sub-section (5) of Section 21 because in his view no appearance was put in on behalf of the Company before the officials of the Board at the time of the taking of the sample by them. I may say at the very outset that this conclusion of the learned Magistrate is wholly erroneous. The petitioners in para 2 of the preliminary objections and para 17 of their reply to the complaint clearly stated that the sample was not divided by the officials of the Board into two parts and no part thereof was given to the Company's representative in spite of his request in that behalf. The Respondent-Board filed a

rejoinder to this reply of the petitioners. They, however, did not controvert these allegations of the petitioners therein. The Board in fact in their rejoinder did not reply to the allegations of the petitioners in their reply and the Board nowhere controverted the said allegations of the petitioners. No affidavit was filed by either side before the learned Magistrate in support of their respective claims. In such a situation the aforesaid allegations of the petitioners had to be taken as not controverted and thus admitted. The learned Magistrate came to the conclusion that the copy of the notice for the inspection by the officials of the Board was duly served on Shri S.K. Arya, Petitioner No. 1. He, however, took view that no appearance was put in on behalf of the petitioners before the official of the Board at the time when they lifted the sample. This observation of the learned Magistrate is wholly against the true facts. The petitioners filed a photo copy of form No. 12 which was available on the record of the learned Magistrate. At the foot of this document there is a noting "Received Form 12" and which purports to be signed by one D.L. Khosla on the same date i.e. May 6, 1984, the date on which the samples were lifted. This receipt was given by Shri Khosla in token of the Board having delivered a copy of Form 12 to him who was the agent of the petitioners present before the officials. The learned Magistrate did not deal with the matter on the basis of the aforesaid allegations which are in the nature of the pleadings of the parties. The learned Magistrate observed that as no presence was put in on behalf of the Company, so the question of there being any request by the Company for dividing the samples into two parts did not arise. This conclusion of the learned Magistrate is not sustainable in view of my above finding that Shri Khosla was duly present at the time when the sample was lifted. Further in view of the said pleadings of the parties it has to be taken that a demand was also made by the said representative to the officials of the board to divide the sample into two parts and to get the same analysed in accordance with Section 21(5) of the Act, but that request was not acceded to. I accordingly hold that the officials of the Board were not justified in getting the sample analysed from a laboratory only recognised by the Board instead of getting the same analysed from the laboratory of the Delhi Administration and without complying with requirements of Sub-section (5) of Section 21 of the Act. That being so, the conclusion that the petitioners were discharging effluents in the stream which were likely to cause pollution is not sustainable. Consequently the impugned order is bad and is liable to be set aside.

4. The learned Magistrate also took note of the fact that the petitioners had not erected any treatment plant as per Clause 5 of the consent order. Mr. Sarin, Learned Counsel for the petitioners, submitted that there was no absolute obligation on the part of the petitioners to erect a separate treatment plant so long as they were not discharging the effluents contrary to the parameters as provided in the consent order. Be that as it may, the true interpretation of the impugned order is that a restraint order has been passed against the petitioners restraining them from discharging their effluents in the stream which do not conform to the quality as per the standards prescribed by the Board in its

consent order and thereby causing pollution of the stream. We cannot read in between the order that a direction has been given to the petitioners to erect a treatment plant. Such a direction is also perhaps not envisaged by the provisions of Section 33 of the Act. Section 33 only provides for the passing of a restraint order by the court against the Company for ensuring the stoppage of apprehended pollution of water in the stream in which the trade effluents of the Company are discharged. I, Therefore, need not go into the question as to whether the petitioners' non-erection of a treatment plant was such an act on which the impugned restraint order was justified. The restraint order is also not based on that footing. For the non-erection of the treatment plant the Board has the power to launch prosecution against the defaulting Company under the provisions of Section 41 of the Act.

5. In conclusion I accept the petition and set aside the impugned order of the learned Magistrate.