

(2001) 07 DEL CK 0089

In the Delhi High Court

Case No : C.W. No. 2285/99 and CM. 8282/99

Delhi Pollution Control Committee

APPELLANT

Vs

Appellate Authority and another

RESPONDENT

Date of Decision : 17-07-2001

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21

Citation : (2001) 94 DLT 212 : (2001) 60 DRJ 352

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. Sanjiv Khanna, for the Appellant; Mr. Rakesh K. Khanna and Ms. Pallavi Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—This writ petition challenges the order dated 28th of August, 1998 passed by the Appellate Authority by which the order passed by the Delhi Pollution Control Committee (for short "the DPCC) dated 1.5.98, refusing consent to operate u/s 21 of the Air (Prevention & Control of Pollution) Act, 1981 was set aside and the DPCC directed to decide the application afresh after undertaking an inspection of the premises of respondent No. 2.

2. Mr. Sanjiv Khanna, the learned counsel for the petitioner, DPCC has based his challenge mainly on the ground that the impugned order has lost sight of the fact that in accordance with the Master Plan, only light & service industries activity can be carried on. The relevant provisions of the Delhi Master Plan, 1990 relied upon by him read as under:

"HEAVY AND LARGE INDUSTRIES

Refer Annexure III H(b)

(a) No new heavy and large industrial units shall be permitted in Delhi.

(b) The existing heavy and large scale industrial units shall shift to Delhi

Metropolitan Area and the National Capital Regional keeping in view the National Capital Regional plan and National Industrial Policy of the Government of India.

(c) the land which would become available on account of shifting as administered in (b) above would be used for making up the deficiency as per the needs of the community. Based on norms given in the Master Plan; if any land or part of land so vacated is not needed for the deficiency of the community services, it will be used as per prescribed land use; however the land shall be used for light and service industries, even if the land use according to the Master Plan/Zonal Development Plan is extensive industry.

(d) Modernisation of heavy and large scale industrial units shall be permitted subject to the following conditions:

(i) It will reduce pollution and traffic congestion.

(ii) whenever the unit is asked to shift according to the policies of the plan, no compensation shall be paid for assets attained because of modernisation."

The above clause mandates that no heavy and large industrial units are to be permitted in Delhi and in particular that the land becoming available on account of shifting of heavy and large industries could only be used for light and service industries even if the land used according to the master/zonal plan is extensive industry. The Learned Counsel for the petitioner has submitted that the above clause of the master Plan read with the Order dated 4.12.1996 of the Hon'ble Supreme Court reported in M.C. Mehta Vs. UOI, (1997) 11 SCC 327 clearly vitiates and impugned order. The said para 3 of the Supreme Court order dated 4.12.1996 reads as under:

"3. We see considerable force in the contention of the learned Additional Solicitor General on the second point also. The existing hazardous industries having been closed, what remains is the plot, superstructure and the workmen. the occupants of the plots and the owners of the industries which have been closed down shall have to undertake fresh procedure for setting up of a new industry. Needless to say that no industry can be set up which is not permitted under the Master Plan. The procedure required for setting up of a new industry shall have to be followed in every case. We make it clear that Government permission and the consent from the Pollution Control Board/Committee, if required under law, shall have to be obtained . Even fresh electric connection and water connection shall have to be applied for and obtained in the changed circumstances. We have no doubt when approached for necessary permission/license/water/electric connections the authorities, shall expedite in dealing with the applications".

3. Mr. Sanjiv Khanna, the learned counsel for the petitioner, Therefore, submitted that the existing industries(as per the above judgment) which have been closed by the orders of the Supreme Court as being hazardous industries, would have to undertake a fresh procedure applicable to a new industry for setting up of a new industry which naturally has to accord with the Master Plan.

4. Mr. Rakesh Khanna appearing for respondent No.2 on the other hand contended that the orders of the Supreme Court dated 10.5.1996, 18.7.96 and 4.12.96 could not apply to the respondent No.2 nor could the portion of Master Plan relied upon by the petitioner apply as land in the present case had not become available on account of shifting but was made available due to the respondent No.2 restarting a new industry as per the Order dated 4.12.96 on the Supreme Court's directions. He has further submitted that shifting as per Clause of the Master Plan relied upon by the petitioner cannot include the starting of an industry, as sought to be done in the present case by the respondent No.2, although under the procedure for starting a new industry by adopting a fresh procedure.

5. In the Order of Supreme Court dated 4.12.96 the plea of the Learned Addl. Solicitor General, Mr. Altaf Ahmed had been noted in the following terms:

"(1) The directions given by this Court in the order dated 10.5.1996 in M.C. Mehta v. Union of India : (1996)4SCC351 regarding land-use -utilization of land available as a result of shifting/relocation/closure of hazardous/noxious/heavy/heavy/large industries from Delhi are applicable to those industries also which are not relocating and are simply closing themselves.

(2) The industries which are not relocating and intend to start new conforming industry/activity shall not be permitted to do that unless they protect the workmen and seek fresh permission to set up the industry from the Government and the Pollution Control Board/Committee. They shall have to obtain fresh electric and water connections.....

So far as the first contention is concerned, learned Additional Solicitor has taken us through the order of this Court in M.C. Mehta v. Union of India : (1996)4SCC351 regarding land-use along with the order dated 8-7-1006 M.C. Mehta Vs. Union of India and Others, regarding relocation of 168 industries. The intention of this Court is clear that the order regarding land re-use was both for relocating industries as well as those which decide to close down and not to relocate. The learned counsel for the industries have not disputed this interpretation. We, Therefore, accept the contention of learned Additional Solicitor General. Nothing more need be said on this point."

Thus it would be readily seen that the plea of the Union of India that shifting/relocation and closure were synonymous was accepted and it was held that the utilization of land was to be based on the Order dated 10.5.96 even for industries which were not relocating but were closing down. In the Order of 10.5.96 the Hon"ble Supreme Court made the following finding:

After leaving a part of the land with the owner for developing permissible land use under the Master Plan the remaining land should be surrendered to the Delhi Development Authority (DDA) for developing the same to meet the community needs."

Thus the Supreme Court clearly emphasized that the land left with the closed identity was to be developed in accordance with the Master Plan.

6. Consequently a change of user in the light of above directions of the Supreme Court in Para 3 above has to be equated to the starting of a new industry. Hence the word "shift" in the Master Plan has also to be read to mean "restart", otherwise an anomalous situation would result where the newly starting industry on the existing plot could start an industry other than light or service but the relocating industry could not do so. Acceptance of the respondent No.2's plea that shifting does not include restart as there was no closure would necessarily imply such an untenable interpretation.

7. Mr.Rakesh Khanna, the learned counsel for respondent No.2/applicant also relied upon the fact that the application of the respondent No.2's workmen seeking compensation on the basis that the said industry had closed down was not accepted by the Hon"ble Supreme Court and in light of this the plea that the applicant's industry had closed down and had to seek a fresh start cannot be sustained.

8. I am unable to agree with the above plea as the Supreme Court order relied upon by respondent No.2 merely do not grant the prayers of the workmen. There is no clear finding that there is no closure. In fact the order dated 4.12.1996 extracted above is clear and read with the Master Plan makes it clear that shifting is to be accorded the same meaning as closure.

9. I am unable to agree with the plea of the respondent No.2 and hold that the Master Plan has to be read in the light of Supreme Court's directions, in particular the Orders dated 4.12.96 & 10.5.1996 and even an industry which is seeking a fresh start of another industrial activity on the existing plot and infrastructure i s bound by the Master Plan as well as the order of the Supreme Court dated 4.12.96 and can only undertake light or service activity. Consequently the writ petition is allowed and the impugned Order dated 28th of August, 1998 is set aside.

10. During the course of hearing it was submitted by the learned counsel for the petitioner that the respondent No.2 has already been granted permission to carry on activities under category A to D. This order will not come in the was of the respondent No.2 utilizing the land in the light of the permissions already granted to it.

11. In view of the above, the petition is accordingly stands disposed of with no orders as to costs.