

(2007) 11 PAT CK 0029
In the Patna High Court
Case No : CWJC No. 9077 of 2007

Drishtee Foundation (A NGO)

APPELLANT

Vs

Bihar State Pollution Control Board and Others

RESPONDENT

Date of Decision : 12-11-2007

Acts Referred:

Citation : (2007) 4 PLJR 801

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Judgement

Navaniti Pd. Singh, J.—The State Government, faced with a situation where existing industries had closed down for one reason or the other and no industry was being set up in the State, came out with various allurements to the industrial sector countrywide inviting them to come to the State and set up industries. Apparently, the State realized that it is only industrialization that could lead to the development of the State. Various legislations were enacted in order to attract industries. Various promises were made and held out to industries but what happens in ground reality is illustrated by this case. Bihar Single Window Clearance Act, 2006 was enacted with the object of providing speedy processing, clearance and certificates required for setting up of industrial undertaking and for all round development of the State and industrial development and also to provide for an investor friendly environment in the State. This object was in furtherance of the object for speedy implementation of industrial projects by providing a single point of clearance to promoters and to ensure early commercial production of such projects.

2. This long preamble and object of the said Act shows the intent of the Government which realized the problems that troubles the industry most. Ordinarily, if an entrepreneur wants to establish an industry, there are large number of independent statutory obligations which he has to complete. Those statutory authorities are far and many and have their own way of working. Entrepreneur may clear one hurdle to get stuck at the other. The result would be

that much before the unit is set up, the entrepreneur would be fed up and tired of running from one authority to another, running from one department to another, meeting one officer to another and the end would be that he would get exhausted physically, mentally and financially and the net result is that the incentive and the will to set up industry frizzles out in the process. It is to get over this that the Single Window System was contemplated by the said Act. The Scheme of the Act predicates preservation of various statutory power vested with various independent statutory authority. So far as compliance of State Legislations are concerned, they are dealt directly by a single authority under the Act but so far as Central Legislations are concerned, this Act provides that once an application is made to the Nodal Agency under this Act then the Nodal Agency virtually becomes the agent of the entrepreneur and then he and not the entrepreneur does the running around and obtains necessary permissions, licences, promise from respective authorities. The whole idea is to take the responsibility of the entrepreneur, from the entrepreneur and transfer it to the Nodal Agency and then it becomes the responsibility of the Nodal Agency to pursue the matter as if it was an agent for the entrepreneur. The Nodal Agency is then to convene meetings of various statutory authority including Central authorities wherein each individual entrepreneur's case is to be discussed and various documentations done, deficiencies discussed, pointed out. This meeting system is with the object of having compliance of all statutory departments/ authorities completed at one place itself and in consultation and knowledge of each other. This process avoids an entrepreneur running individually to individual statutory authorities, thus, preventing wastage of time, money and energy on different authorities at different times. In the present case, as would be seen, the State machinery has conveniently ignored the concept of Single Window System and created the very problem which was sought to be avoided much to the detriment of entrepreneur.

3. The petitioner Drishtee Foundation is a Non-Government Organization in the business of BPO (Business, Processing and Outsourcing). The main business of the petitioner is for establishing Community Development Centers for information and communication technology. As these centers are dependant on continuous and uninterrupted power supply which is one of the biggest hurdle for an entrepreneur in the State, they have to be backed by electric generating installations. Electric generating installations are of different types and one which has recently been developed and put to use are based on bio fuels with minimal or no pollution. They are environment friendly. Petitioner wanted to set up one-such unit at Village-Saurath, Police Station-Rahika, District-Madhubani. As their investment was above Rs. 30,00,000/-, they made application before the Nodal Agency which in their case was a Cell headed by the Director, Technical Industries Department. Government of Bihar. The Cell consists, inter alia, of the representative from various authorities and department of Government including the State Pollution Control Board. It would appear in the relevant meetings in which petitioner's project was discussed, none other than the Chairman of the

Pollution Control Board was himself personally present. At one point of time, when the case of petitioner's industry was taken up for consideration by the said Cell, minutes whereof have been brought on record, it is recorded that some relevant papers are wanting and, as such, the matter in relation to petitioner was adjourned. What papers were missing or wanting is not noted. What objection or points were raised on behalf of Pollution Control Board is not noted though even in their counter affidavit, they have not stated as to any objection raised by them. In the next meeting which is dated 7.5.2007 which is the 42nd meeting, it is noted that papers having been made available by the petitioner, recommendations of various departments considered and it was decided that the opinion of Bihar Renewable Energy Development Agency (BREDA) should be obtained. Nowhere in this meeting any objection whatsoever from the State Pollution Control Board was raised nor noted even though once again the Chairman of the Pollution Control Board was personally present in the meeting and has signed the proceeding of those meetings. From this, it could be seen that so far as petitioner was concerned, he had discharged his obligation. Nothing was wanting at his end. Only opinion of BREDA was wanting. Shri Chitaranjan Sinha, learned Senior Counsel appearing in support of the writ application stated at the Bar that BREDA also subsequently granted no objection which position is not contested by any party.

4. However, the petitioner having submitted detailed project report clearly indicating setting up of the bio fuel generating system with details therein and undisputedly, the same also having been referred to the Pollution Control Board and their Chairman being present in all the deliberations personally, there was no objection from any quarter, thus, the petitioner started the work at sight and set up the unit. Admittedly, the bio gas unit was still to become functional, in the meantime, the work was being carried on with the help of diesel generating set of 10 KVA.

5. All of a sudden an inspection was carried out by the officers of the State Pollution Control Board on 5.7.2007 at the sight. The inspection report is Annexure-B/2 to the counter affidavit of respondents No. 1 and 2. The details of the process are mentioned therein. It is also noted that the emissions which are emitted from the bio gas plant are sucked and collected at the bottom there being no stack or any vent provided. This inspection is done in the district of Madhubani on 5th of July, 2007 and on the very next day that is on 6th of July, 2007 from Patna, letter for stoppage of work is issued from the Bihar State Pollution Control Board to the petitioner. That letter is Annexure-7 to the writ application. The opening lines of the letter speaks for itself. The Bihar State Pollution Control Board completely sleeps over the fact of their Chairman participating in the meetings of the Single Window System but chooses only to refer to "public complaint" and also inspection conducted on 5.7.2007. It gives a finding that the unit is being set up in residential area and there are apprehensions that it may cause air pollution including noise pollution if the unit is brought in operation. Therefore, as no prior consent has been taken under the

provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, the unit must be closed forthwith and the unit is even threatened with prosecution.

6. At this very juncture, it is to be noted that if this letter is referred to in isolation, it would appear that the Bihar State Pollution Control Board suddenly made a discovery of the unit being secretly set up and, thus, came into action but what is not mentioned in this letter is that a full detailed project report with location and other functional parameters were already with the Board and the Chairman of the Board was personally participating in the meetings and presentations in relation to setting up of this industry where he had never raised any objection even though personally present.

7. Here, I may also mention that the letter refers to "public complaint". This "public complaint" is also now out in the open in the shape of the interveners to the writ application. They are none else than the agnates (Gotiyas) of the petitioner who are instrumental in motivating public of that locality. This fact is not disputed by Shri Ganesh Prasad Singh, learned Senior Counsel appearing for the interveners.

8. The net result is that the whole concept with which the Single Window System was set up has become nugatory and useless so far as this entrepreneur is concerned, thanks to the bureaucracy. He has already invested over Rs. 30,00,000/- and thanks to the manner in which the bureaucracy and statutory authorities have worked, he is stucked with it even though he was given to understand that all statutory formalities including those required under Central Statute like the Pollution Act above would be dealt with and tackled by the Nodal Agency who in fact invited the participation of the Chairman of the Bihar State Pollution Control Board but all in vain. This Court really wonders what was the Chairman of the Pollution Control Board doing in those meetings. He was invited with a specific purpose and object. He never discharged his functions. Apparently, such a Single Window System does not appear to be convenient to such authorities who would apparently like to deal with entrepreneurs face to face rather than through a common window in a meeting. If on the project being disclosed, the Chairman of the Bihar State Pollution Control Board had any reservation with regard to statutory compliances having been met or not being met, it was not only his duty but obligation to bring it on record in those meetings so that the shortcomings would be met by the entrepreneur through the Nodal Agency but apparently this did not serve the interest of the Pollution Control Board. They had other ideas and wanted the entrepreneur to approach them directly, thus, destroying the concept of Single Window System.

9. This Court is at pains to note the above fact and it has been noted to bring to the notice of the concerned statutory authorities including those under the Single Window System having duty and obligation to help the entrepreneurs that necessary changes in attitude and statute may be done before it is too late. Otherwise, notwithstanding Single Window System, the entrepreneurs would still

have to approach individual authorities individually in their office or elsewhere and that would be destructive of the Single Window System. If this is not redressed at once, then the State will lose whatever it had sought to gain by the Single Window System.

10. If the Chairman of the Bihar State Pollution Control Board who, this Court assures to be a responsible person. had any reservations about the project, he should have made it known immediately at the first meeting itself or when the project report was forwarded to the Pollution Control Board by the Nodal Agency and not sit back and act only when "public" (Gotiyas) choose to persuade them to act. Even the "Nodal authority" under the Act never told the petitioner anything in the matter and virtually left the petitioner to fend for itself. This effectively destroyed the very concept of Single Window System.

11. Shri Shivendra Kishore on behalf of the Bihar State Pollution Control Board, with reference to paragraph-4 of the supplementary counter affidavit filed in this case, states that the Bihar State Pollution Control Board had yet to receive any application for consent of the establishment of any project formally from the State Nodal Agency for decision in the matter meaning thereby that the State through the Nodal Agency had not sent any application to it for its decision. Regrettably, this statement seeks to conceal more than what it seeks to disclose. In the counter affidavit of the State as also in the letter as annexed by the Bihar State Pollution Control Board itself as Annexure-C, it is admitted position that the petitioner made not only due applications through the Nodal Agency but also made a visual presentation to the Nodal Agency in a meeting in which the Chairman of the Bihar State Pollution Control Board was also physically present. The counter affidavit of the Bihar State Pollution Control Board seeks to brush this aspect of the matter under the carpet. It fails to explain as to what the Chairman of the Bihar State Pollution Control Board was doing in these meetings. He was to represent his department and the authority conferred on him under the relevant statute but made no useful contribution at all. By his inaction, he has created more obstacles rather than help clearing them.

12. I, therefore, reject the contention that the Bihar State Pollution Control Board was totally unaware of the developments. I hold that the Bihar State Pollution Control Board failed to discharge its duty as a member of the Nodal Agency and it was a useless formality informing them in the hope of helping the entrepreneurs.

13. Ordinarily, this Court would in such situation demand of the Bihar State Pollution Control Board to explain all these situations before this Court but this Court considers it unnecessary as their intentions are clear. They do not want to extend their helping hand in the process of industrialization of the State. Regrettably, this Court cannot issue directions to override statutory compliances. Whatever may be object of Single Window System, the State has failed to implement the same. I am, therefore, left with no option but to direct the writ petitioner, who has risked unnecessarily his capital on the assurance of the State,

to make independent application to the Pollution Control Board in accordance with the statutory guidelines therein and those applications should be processed forthwith by responding without undue delay and the petitioner be told exact nature of deficiency and compliance required. Let this be done by the petitioner as soon as possible keeping in mind that the petitioner has already invested about Rs. 30,00,000/- and cannot leave Bihar, and let a writ accordingly be issued to the respondent Bihar State Pollution Control Board.

14. With these observations and directions, this writ application stands disposed of. Let a copy of this order be sent to the Chief Secretary, Government of Bihar, Secretary, Department of Industries, for their information.