

(2015) 07 PAT CK 0166

In the Patna High Court

Case No : Criminal Miscellaneous No.19992 of 2013

Md. Tarique Hussain

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Citation : (2015) 5 FLT 748

Hon'ble Judges : Mr. Aditya Kumar Trivedi, J.

Bench : Single Bench

Advocate : Mr. Amarnath Singh and Mr. Ashok Kumar, Advocates, for the Petitioners; Mr. Uma Shankar Pd. Singh, A.P.P, for the Opposite Parties

Final Decision : Allowed

Judgement

Mr. Aditya Kumar Trivedi, J.—An order dated 25.02.2013 passed by the Sub-divisional Judicial Magistrate, Patna in Complaint Case no.2(M) of 2013 whereby and where under petitioner has been summoned to face trial for an offence punishable under Section 37 of the Air (Prevention and Control of Pollution) Act, 1981, has been put under challenge at the instance of petitioner/accused.

2. Bihar State Pollution Control Board through its Assistant Environment Engineer has filed complaint petition before the Sub-divisional Judicial Magistrate, Patna containing the gist of allegation that on 27.08.2012, complainant had received complaint from New Era High School disclosing therein that a factory/ industrial establishment was under the process of construction and after establishment and its operation, it will cause tell upon the health and studies of the student due to pollution. After receiving the aforesaid complaint, Board had conducted inspection on 03.01.2013 and found a printing press under the name and banner M/s Global Print Associates in operation. Proprietor/ petitioner was present. During inspection, it was also found that two units of printing press was in operation. It has also been disclosed that the accused was required to obtain prior consent (N.O.C.) from the complainant to establish the industry which has

not been obtained and on account thereof, has committed an offence punishable under Section 37 of the Act.

3. Because of the fact that it happens to be official complaint on account thereof, cognizance has been taken by the learned lower Court and summoned the petitioner vide order impugned, consequent thereupon, instant petition has been filed.

4. It has been submitted on behalf of petitioner that for establishment of printing press, N.O.C. from the Board is not at all warranted. However, to avoid future complications, permission to grant N.O.C. was filed before the Board, which was rejected. However, in appeal in terms of Section 31 of the Air (Prevention and Control of Pollution) Act, 1981, which was preferred as per direction of the Hon'ble Court vide order dated 14.03.2013 in C.W.J.C. No.4811 of 2013 (Annexure-2) was preferred and as per order of the appellate Court, N.O.C. had already been granted (Annexure-6). On account thereof, the instant prosecution has become infructuous.

5. On the other hand, the learned Additional Public Prosecutor opposed the prayer and submitted that offence had already been committed much before grant of N.O.C. Hence, instant prosecution did not require interference.

6. For better appreciation of the contention raised on behalf of respective counsels, Section 37 is incorporated with:-

"37. Failure to comply with the provisions of Section 21 or Section 22 or with the directions issued under Section 31-A-(1):- Whoever fails to comply with the provisions of Section 21 or Section 22 or directions issued under Section 31-A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure".

(2) If the failure referred to in Sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine".

7. From perusal of Section 37 of the Act, it is apparent that it comes into play on account of violation of Sections 21, 22 as well as Section 31-A of the Act.

8. Section 21 deals with restrictions on use of certain industrial plant and reads as follows:-

"21. Restrictions on use of certain industrial plants. [(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area : Provided that a person operating any industrial plant in any air pollution control area,

immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.]

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed "and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed :

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, 16*** such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused,

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, 17[and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled: Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned.

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely -

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises; .and

(v) such other conditions as the State Board, may specify in this behalf,

(vi) the conditions referred to in clauses (i), (ii) and

(iv) shall be complied with within such period as the State Board may specify in this behalf-

Provided that in the case of a person operating any industrial plant 19*** in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months : Provided further that-

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-created except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally".

9. Section 22 contains a restriction not to allow emission of air pollutants in excess of the standards laid down by State Board and his status as follows:-

"Persons carrying on industry, etc., not to allow emission of air pollutants in excess of the standards laid down by State Board- No person operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board under Clause (g) of Sub-section(1) of Section 17".

10. Section 31-A deals with power to give direction and reads as follows:-

"Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions".

11. Section 2 deals with definitions where under:-

(a) "air pollutant" means any solid, liquid or gaseous substance[(including noise)] present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) "air pollution" means the presence in the atmosphere of any air pollutant;

(j) "emission means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

12. From perusal of the complaint petition, it is apparent that the complaint made by the school was not with regard to air pollution nor during course of inspection conducted on 03.01.2013 by the officials of the Board, the aforesaid event was visualized. Furthermore, complaint is totally silent with regard to emission of air pollution and in the aforesaid background neither requirement of Sections 21, 22 as disclosed above is attracted. In likewise manner, there happens to be status of Section 31-A of the Act. Though, noise pollution has been attracted within definition of Section 2, but again the prosecution failed to disclose its measurement, and further, where noise was hazardous to public. Contrary to it, neither the complaint petition nor the inquiry report, part & parcel of complaint petition did disclose regarding presence of noise pollution to such level adversely affecting the human life. That being so, the complaint is suffering from serious deformity.

13. Consequent thereupon, it did not justify application of Section 37 of the Act on its face whereupon cognizance taken by the learned lower Court by the order impugned is found contrary to the spirit of law and is accordingly, set aside. Petition is allowed.