

(2013) 08 PAT CK 0060
In the Patna High Court
Case No : CWJC No. 9064 of 2013

M/s. U.A.L. Industries Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 4

Citation : (2014) 4 EFLT 237 : (2014) 1 PLJR 192

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Vinod Kanth and Mukul Sinha, for the Appellant; Shivendra Kishore, Abhimanyu Sharma, Mrs. Binita Singh and Mr. Umesh Narayan Dubey, for the Respondent

Judgement

J.N. Singh, J.—After marathon arguments for days, this Court has felt the necessity to involve the Central Pollution Control Board (for short "the Central Board") in the matter only because this Court has now gathered an impression that the actions of the Bihar State Pollution Control Board (for short "the State Board"), at least in this matter, have not been above board. The word "Board" used for it is, in a way, misnomer, as, on a resolution of only five members present, out of twelve, taken as far back as on 22.4.1986, the Chairman stands delegated to exercise all the power of the State Board, as it had then. The original records of the State Board, connected with the present case, produced by the learned counsel and perused by the Court, showed that, there was hardly any independent application of mind by the Chairman in the matter at any point of time, apart from endorsing the notings of his subordinates by putting his initials only or just by putting a note "as proposed", Coupled with this state of affairs there, its vacillating stand, first supporting the case of the petitioner company all the way, on the basis of facts and figures collected in an inspection held by its officials, before the Division Bench in a P.I.L., filed on behalf of the residents of the locality, represented by the petitioners there and the intervenors here, and also its stand in favour of the petitioner before the Ministry of

Environment and Forest, Government of India, and then a total somersault in its stand here, supporting the stand of the residents of the locality, on the basis of an ex parte "surprise inspection" held on their protests/representations, shows that the functionaries of the State Board cannot, at least, be taken to be immune from influences and pressures, so as to earn confidence of this Court for deciding the issues in the case on their affidavits and reports. As the situation now appears to exist, the State Board, having become defunct by delegating its powers to the Chairman, is, in fact, being run by the subordinate officials, with mechanical, approval of the proposed actions/decisions by its Chairman. Above all, the delegation of all the powers of the Board to the Chairman by five members, out of twelve, and giving him absolute authority, prima facie, itself may be in the teeth of, and contrary to, the spirit and purpose of Section 4 of the Water (Prevention & Control of Pollution) Act, 1974, laying down for constitution of the Board by members with varied experiences and from different sections. It was not a difficult proposition to pin down the State Board to its earlier stand, presented before the Division Bench, supporting the petitioner company on affidavit, under the principles of promissory estoppel, but for the fact that the matter relates to sensitive arena of environmental pollution and likely health hazard, for time immemorial, to the people of the State in general and the residents of the locality in particular. Hence, this Court is of the opinion that, the legal fiction notwithstanding that a "court is expert of all experts", it should not attempt to take a plunge into the field by super-imposing its opinions and findings in the matter, which should be left only for an expert body.

2. The State Board has laid down some norms, in the form of a "Guidelines", which may or may not be statutory, but has been held valid by another Division Bench of this Court. Hence, the same has to be followed by all entrepreneurs proposing to set up any industry to which the Guidelines may be applicable. At least this much is clear that these "Guidelines" are meant for protection of environment and prevention of possible health hazard to the people for generations. In the circumstances, this Court is really surprised with the stand of the State Board that the norms have been relaxed for the two other asbestos manufacturing units in operation from before, only on the ground that they are running in the respective industrial areas. Does it mean that, in spite of the entire State of Bihar having been declared "Air Pollution Control Area" long back, the industries running in the industrial areas in the State are not required to follow the norms and are permitted to cause environmental pollution and health hazard to the people residing around the industrial areas and to their coming generations? Does any pollution control board, in the present case, represented by one individual only, has, or should have, the power to relax the norms, meant to control environmental pollution and safeguard the humanity from health hazards and any recurrence of Bhopal Gas Tragedy?

3. In these circumstances, this Court has no other option than to fall back upon the Central Pollution Control Board, the only body upon which this Court can place reliance for assistance in the matter. Accordingly, on the request made by

this Court, learned counsel for the petitioner has added Central Board with its appropriate description as party respondent no. 8 in this case.

4. It was informed to this Court that Mr. Umesh Narayan Dubey, learned counsel is in the panel of Central Board and represents the Board in this Court in the matters in which it is a party. Accordingly, on the request of this Court, he is present in the Court and accepts notice on behalf of the Central Board for necessary communication of this order and a copy of the pleadings to the Central Board.

5. After careful consideration of the matters in which this Court requires assistance of the Central Board, this Court formulates some queries for the Central Board to answer and issues some directions for it and others to comply. They are:--

(i) Whether the norms contained in the Guidelines framed by the State Board are in conformity with all India norms and with the same yardsticks and the same requirement of specifications for establishment of an industry?

(ii) Whether any State Pollution Control Board has the liberty to relax the norms in favour of any industry, already running or about to be established, in an industrial area, or elsewhere?

(iii) The Central Board shall also take into account the provisions of Item 27 of Schedule-I of the Environment (Protection) Rules, 1986, providing for parameters for emissions for all types of Asbestos manufacturing units and shall express its opinion regarding its effect and import on established norms for setting up of an Asbestos manufacturing unit as applicable in the Country.

(iv) The Central Board is directed to constitute a committee of at least five of its qualified and experienced officers.

(v) The said Committee shall draw up a programme to visit the site of the petitioner for inspection, preferably on a holiday.

(vi) The said Committee shall inform its programme to the State Board, the District Magistrate, Vaishali, the Superintendent of Police, Vaishali and the District & Sessions Judge, Vaishali.

(vii) The District Magistrate shall co-ordinate and shall see to it that the Committee of the Central Board is given all assistance and all facilities during its visit and in the inspection of the site of the petitioner.

(viii) The Superintendent of Police, Vaishali shall see to it that there is no hindrance to the said Committee in the visit of the site of the petitioner and its inspection. He shall particularly see that no member of public creates any unruly scene on the site and during the inspection and shall, if necessary, cordon off such area for such time as may be required.

(ix) The District and Session Judge, Vaishali is requested to depute a judicial

officer, of the rank of Additional District and Session Judge to witness the entire visit and inspection of the site of the petitioner by the said Committee. After the completion of inspection, he shall submit his report, through the District and Session Judge, Vaishali, to this Court in this case, in a sealed cover within a week, in which he shall also report about the persons present during the inspection.

(x) The Committee shall identify the location of the source of emission/Chimney and the battery area of the proposed unit of the petitioner, in reference to the revised plan submitted by the petitioner before the Division Bench and available in a sealed cover with Sri Shivendra Kishore, learned counsel for the State Board, and hold the inspection of the site and take measurements in the background of the established norms for setting up an asbestos manufacturing unit.

(xi) The said Committee shall submit its report, with its recommendations in respect of establishment of petitioner's industry, to this Court in this case, preferably within one month from today.

(xii) During the inspection by the said Committee, one representative of the State Board, one representative of the petitioner alongwith its technical staff to aid and assist shall and Sri Shivendra Kishore, learned counsel of the State Board and Sri. Mukul Sinha, learned counsel for the petitioner, if they desire, may be present to witness the inspection.

6. At this stage Mr. Kanth, learned senior counsel appearing for the petitioner, submits that it must be clear that this order is being passed by this Court only for its assistance by the Central Board and should not be treated as a concession or to have been passed with the agreement of the petitioner. He also submits that the impugned notice was issued to the petitioner only on account of alleged violation of norms of distance found in the inspection held on 10.4.2013 and the impugned order recalling "No Objection Certificate" (NOC) was also passed accordingly. Hence, any enquiry by the Committee of the Central Board should be confined only to the measurement of the distance and not beyond that. He also submits that, permitting the Committee to hold inspection in reference to the established norms shall amount to opening the entire matter again, which shall be in the realm of public interest and beyond the orders of the Division Bench.

7. This Court is unable to accept the said submissions of Mr. Kanth. As indicated in this order earlier, this Court has found that the conduct of the State Board in the matter did not appear to be above board. This only has necessitated involvement of the Central Board in the matter. Hence, it will not be proper for this Court to disbelieve only that part of the report of the State Board which is against the petitioner and accept the part which may be in its favour. Hence, in the opinion of this Court, the said Committee of the Central Board is necessarily required to be given a free hand in inspection, measurement and report in the matter. Moreover, in view of the order of the Division Bench, petitioner was also at liberty to approach it in the said PIL itself to enable the Division Bench to

monitor the matter. But instead of approaching the Division Bench, petitioner itself has chosen to file this fresh writ application in this Court. Hence, it cannot raise a grievance that this Court is taking the matter to the realm of public interest or proceeding beyond the orders of the Division Bench, by passing this order in the circumstances elaborated above.

8. Mr. Kanth had earlier also drawn the attention of this Court to the communication of the Ministry of Environment and Forest dated 23.2.2012 to the petitioner giving its clearance with conditions and also enclosing a copy of the minutes of the Expert Appraisal Committee held in its meeting dated 26-27th September, 2011. He has drawn the attention of this Court to the said documents today also. He submits that the said Expert Appraisal Committee had in fact visited and inspected the site of the petitioner on 15th of September, 2011 during the pendency of the PIL and had recorded its conclusions and recommendations in which it had found the project site as per the siting guidelines of the State Board. However, he accepted that the said Committee, during its inspection of the site, had visualized the distance of school, State Highway, hospital, road etc. from the battery limit using the Google map only and had taken into account the materials placed before it by the State Board and on that basis had found the unit conforming to all the norms. He submits that, now that the issue, which has cropped up on the basis of said surprise inspection, is only with respect to the distance criteria and nothing else. Hence, the inspection of the said Committee of the Central Board should be confined to taking measurements only and should not be directed to hold the inspection "in the background of the established norms for setting up an asbestos manufacturing unit".

9. This Court has indicated earlier that the conduct of the State Board and its officials have been such that it is difficult for this Court to place reliance on facts and figures contained in their affidavits and documents. Hence, this Court considers that instead of confining the inspection by the said Committee of the Central Board only to measurement of the distances, it is appropriate that it should hold inspection in the light of the established norms for setting up of Asbestos manufacturing industry as applicable in the Country. Hence, the objection of Mr. Kanth with regard to direction of this Court to the said Committee for "inspection in the background of established norms" is rejected.

10. Lastly, this Court makes it clear that the observations made in this order are only on the basis of the submissions and materials placed by the learned counsel for the parties in the case so far, and they should not be taken as final opinion or findings of this Court on any issue and should not be referred as such.

11. Put up on 19th of September, 2013 at 2.15 P.M.

12. Let a copy of this order be handed over to Mr. Umesh Narayan Dubey, learned counsel appearing for the Central Board alongwith one copy of the pleadings of the respective parties, which shall be served on him latest by Friday,

for onward communication to the authorities of the Central Board. Let a copy of this order be also sent to the District & Sessions Judge, Vaishali, District Magistrate, Vaishali and Superintendent of Police, Vaishali.