

(2017) 05 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : 106 of 2017 MP No 01 of 2017

Naseer Joinery Laloo

APPELLANT

Vs

Regional Director S.P.C.B & Ors.

RESPONDENT

Date of Decision : 18-05-2017

Acts Referred:

Citation : (2017) 05 J&K CK 0006

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : G. R. Tantray, Muzaffar Nabi Lone, Mir Majid

Final Decision : Disposed Of

Judgement

1. The writ petitioner is running a wood based Industrial Unit at Laloo, Shishgari Bagh, Hyderpora, Budgam from the year 2005. It is stated that

the said unit is running in a tin shed. The unit is engaged in wood furniture and joinery. The unit is having registration certificate dated 29.11.2005,

issued by the District Industries Centre, Budgam. The petitioner is also licensed by Jammu and Kashmir, Forest Department for running the

Secondary Wooden Based Industrial Unit. For running the industrial unit, petitioner is required to install the electric motor. Based on the

permissions, aforesaid, petitioner has installed 3 hp Motor. The petitioner's unit is also registered with the J&K Shops and Establishment Act,

1966, annexures-B & C of the writ petition.

2. The petitioners' unit is established in 8 marlas of land falling under Survey No. 5, gifted to him by his grandmother. It appears that with respect

to the property in question, a civil suit is pending between petitioner, his brother, mother with his maternal uncle. According to the petitioner, the

maternal uncle in order to wreck vengeance for initiating the litigation against them have started to trouble the petitioner by filing complaints to the

Pollution Control Board (PCB) stating that the unit is causing serious noise pollution and, therefore, action should be taken. The private respondent

are related and maternal uncles of the petitioner. They are seriously pursuing the Pollution Control Board to take action so as to close the unit. On

the basis of complaint, the Pollution Control Board has initiated action and have issued two notices, one annexure-E dated 03.12.2016 and

second, annexure-F dated 02.01.2017. In both the notices, petitioner was directed to take necessary remedial measures and submit compliance

within a time frame, failing which it was stated that legal action would be taken.

3. The petitioner, replied to the legal notice dated 10.01.2017, stating that in order to control the noise pollution allegedly caused by the 3hp motor

a brick wall has to be put up by replacing the existing tin sheets. He has further stated that for replacing the tin sheet by brick wall, he is required to

seek permission from Srinagar Municipal Corporation (SMC). The petitioner, therefore, pleads that till requisite permission is obtained from SMC,

his unit shall not be disturbed.

4. On this premise, writ petition has been filed for the following relief:-

(a) Mandamus, commanding the official respondents, to provide an adequate and sufficient time to the petitioner to introduce the

remedial measures in the shape of replacement of existing Tin Sheets by brick walling after obtaining permission from the Srinagar

Municipal Corporation and after obtaining the modification of the status-quo order passed by the trial court.

(b) Mandamus, commanding the official respondents not to close the Industrial Unit of the petitioner without following the due

procedure of law as provided in the Air Prevention and Control of Pollution Act, 1981.

5. After notice, on behalf of PCB, Mr. Muzaffar Nabi Lone, GA appeared but has not filed the objections on behalf of PCB. However, private

respondents represented by Mr. Mir Majid, Adv. have filed their objections.

6. Considering the nature of controversy, scope of relief sought for and the reason for filing the instant writ petition and also taking into

consideration the apprehensions, expressed by private respondents on the issue

of noise pollution, the writ petition is admitted to hearing and taken

up for final disposal in the following manner:-

(i) Admittedly, petitioner seeks time to implement the directions of the pollution control board, stating that he would construct a brick

wall after obtaining approval from SMC. He has fairly stated that application is yet to be filed before the PCB and the reason for

non-filing the same is that the PCB has to specify the remedial measures that should be taken so that all the directions can be

addressed in one go. As a result the complaint filed by private respondents will be put to rest once for all. It appears that private

respondents who are the close relatives of the petitioner seeks a pound of flesh stating that the unit should be closed forthwith since it

is running without permission of PCB and also primarily on the land dispute pending in the court.

(ii) Learned counsel for the PCB while reacting to the complaint filed by private respondents has suggested the installation of

PCDs/PCMs in the unit. The measures which are to be taken to arrest the pollution has to be specified by the Authority if and when a

request is made by the petitioner. Petitioner is yet to seek the guidance of the PCB.

(iii) Admittedly, the unit is running on a permission, granted by various Government agencies. The only further requirement that is

wanted is the approval of PCB. Therefore, the issue that arises for consideration is proper method to be adopted for ensuring proper

compliance of the law on pollution control and also to enable the unit to run which is otherwise permitted by other Government

departments of the State.

(iv) This Court has also to take into consideration the objections of the private respondents. Keeping all this in mind, since petitioner

has already responded to the notice of the PCB stating that he will take proper measures but for want of adequate inputs from PCB,

the effective control of noise and other forms of pollution has not been undertaken. In the result, petitioner is granted two weeks" time

to approach the Regional Director, J&K State Pollution Control Board with an application and request appropriate instructions from

the Authority as to what are the pollution control methods, to be adopted and accordingly implemented.

(v) The suggestions made by the Pollution Control Authority be implemented within the time framed, fixed by the Authority

concerned.

(vi) The petitioner shall also submit an application before the SMC for grant of permission for taking up construction so as to enable

the industrial unit to comply with the suggestions/directions of PCB.

(vii) The Authority (PCB) shall give necessary assistance to the petitioner, enabling him to complete the requirements of Pollution

Control law for running the unit.

(viii) With respect to civil suit pending before the court below, the parties are at liberty to pursue the same on merits.

(ix) In the event, petitioner does not make an application(s) before the PCB and SMC within the time frame, prescribed by

authorities the PCB Authorities are at liberty to take appropriate action as per law.

(x) The position as on date as it exists on spot to continue the above directions are complied.

(xi) The private respondents are at liberty to raise their objections before the authorities and the authorities shall provide them an

opportunity of being heard in the matter at the appropriate stage.

7. The writ petition along with connected MPs is, accordingly, disposed of as above.

8. Interim, direction shall also stand vacated.