
(2013) 01 PAT CK 0063
In the Patna High Court
Case No : CWJC No. 23592 of 2012

New Era High School

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 17, 19, 21, 22A, 24
Constitution of India, 1950 — Article 21, 48A, 51A(g)

Citation : AIR 2013 Patna 70 : (2013) 1 PLJR 621

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Kamleshwar Prasad, for the Appellant; Shivendra Kishore for the Board and Mr. Arvind Ujjwal, for the Respondent

Judgement

Navin Sinha, J.—The substantive order was dictated in Court on 8.1.2013. Court research during finalization of the order revealed need for directions drawing sustenance from Supreme Court orders. The case has been listed today at the instance of the Court. Heard the learned Counsel for the petitioner, the State and the Bihar State Pollution Control Board (hereinafter called the Board).

2. The petitioner is an Educational Institution aggrieved by the establishment of a Printing Press adjacent to the School situated in Gyanchak, P.O.-Kothia, P.S.-Didarganj.

3. Learned Counsel for the petitioner submits that the Educational Institution is duly registered under the Societies Registration Act. It was established at the present location in October, 2008 and is imparting education from Nursery to Class-X, duly affiliated to the CBSE also. The Printing Press has been established recently without proper permission from the Board and the District Magistrate under the Noise Pollution Control Regulation, 2000 (hereinafter called "the Regulation"). It is creating air and noise pollution disturbing peace and tranquility of the area having adverse effect on the School and the minor children. A representation has been submitted to the District Magistrate on 12.5.2012

followed on 23.7.2012 unsuccessfully. On 27.8.2012 a representation has also been submitted to the Board objecting to the opening of the Press at the present location without any result. In absence of any appropriate action the petitioner has been compelled to file the writ application.

4. A counter affidavit has been filed on behalf of the Board. It acknowledges the aforesaid representation and stops at that. It then claims inspection of the premises on 3.1.2013 after institution of the writ application on 10.12.2012. Acknowledging that the press is in operation it states that it was opened without obtaining a No Objection Certificate from the Board u/s 21 of the Air (Prevention and Control of Pollution) Act, 1981. It asserts that the press could not have been established and made operational without prior permission of the Board. That necessary steps were being taken for its closure. The counter affidavit says no more.

5. Counsel for the Board submits that it is not possible for the Board to keep carrying out regular survey of air pollution areas to discover violating Units. It is only when the attention of the Board is invited to a particular and specific violation the Board carries out its statutory duties. There was paucity of staff for monitoring air pollution regularly.

6. The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "the Act") in its preamble states that it was enacted for conferring on and assigning to the Board power and functions relating to control, prevention and abatement of air pollution. The statement of objects and reasons states that industrialisation and the tendency of the majority of industries to congregate in areas which are already heavily industrialised, the problem of air pollution has begun to be felt in the country in the areas densely populated increasing air pollution, the presence in air, beyond certain limits of pollutants having a detrimental effect on the health of the people as also on animal life, vegetation and property. Referring to the United Nations Conference in June 1972 it states that the Government has decided to implement decision of the Conference with regard to preservation of the quality of air and control of air pollution. It emphasizes the need for an integrated approach for tackling the environmental problems relating to pollution and the creation of a State Board. Section 4 of the Act mandates for creation of a State Pollution Control Board. Section 17 of the Act mandates the Board to prepare a comprehensive programme for prevention, control and abatement of air pollution and to secure its execution. The Board has to advise the State Government on any matter concerning the prevention, control and abatement of Air Pollution. It is statutorily required to collect and disseminate information relating to air pollution. It is further required to inspect an industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution. The Statute further mandates the Board to inspect air pollution control areas at intervals, assess the quality of air therein and take steps for the prevention, control or abatement of air

pollution in such areas. Section 19 mandates the Board in consultation with the State Government to declare any area as air pollution control area for the purposes of the Act. Section 21 puts a restriction on use of certain industrial plants without obtaining No Objection Certificate from the Board. Section 22A empowers the Board that if emission of any air pollutant are likely to occur by a person operating an industrial plant the Board shall make an application to a Court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class for restraining such person from emitting such air pollutant. Section 24 empowers the Board to enter and inspect for performance of its obligation by the Board to examine and test any industrial plant which it has reason to believe is or is committing an offence. Section 25 empowers the Board to call for any information including information regarding the type of air pollution emitted into the atmosphere from the occupier or any other person carrying on such Industry. The Officers of the Board have the right to call such Industry or Plant. Section 26 requires it to take sample of air or emission to determine level of pollution. Section 28 provides for establishment of a State Air Laboratory. Section 37 provides that if a person fails to comply the provisions of Section 21 it is punishable. If the violation continues beyond one year of the punishment the penalty is enhanced as provided in the statute. Section 38 provides for penalty if a person fails to furnish to the Board or an Officer of the Board information called for by it. It includes any obstruction caused by any person in preventing the Officer of the Board from performing its functions. Section 39 provides for penalty for contravention of certain provisions where no penalty has been provided in the Act.

7. The inspection report appended to the counter affidavit discloses the casualness and reluctance with which the Board has inspected the premises only after the institution of the writ application. There is no explanation why the representation dated 27.8.2012 was not considered till then. The report does not even disclose that the Officer inspecting it even called for an information whether the press was Proprietorship concern or Partnership concern or a Company. Section 40 of the Act specifically deals with the offences by Companies. The Board appears to be acting more in breach of its statutory responsibilities. Paucity of staff is a frivolous defence for failure to perform statutory duties.

8. Rejecting the defence for paucity of funds or staff it was observed in Dr. B.L. Wadehra Vs. Union of India and others, as follows:--

22....Apart from the rights guaranteed under the Constitution the residents of Delhi have a statutory right to live in a clean city. The courts are justified in directing the MCD and NDMC to perform their duties under the law. Non-availability of funds, inadequacy or inefficiency of the staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of their statutory obligations.

9. The Court has been constrained to take note of the provisions of the Act because of an unfortunate stand taken by the Board before it that it is under no

obligation to perform its statutory duties, to inspect air pollution control areas at intervals, to detect air pollution and to take corrective/penal action for establishment of industries without No Objection Certificate u/s 21, unless and until someone from the Society invites its attention to it. Does it not detract from the very purpose for creation of the Board. Will it not be interpreted to mean that the Board is not desirous of enforcing the law but shall do so with reluctance only when it is compelled to do so by orders of the Court. Can it also mean that the Board deliberately turns a blind eye to flagrant violation also. The Board as noticed earlier has a statutory duty to perform when the first initiative has to come from the Board itself by ensuring that no person violates the Act. The fact that its attention may be invited to a particular violation is only supplementary. It does not detract from the primary obligation of the Officers of the Board to enforce the law. They are required to and mandated to move out of their office premises, conduct regular inspection of the air pollution control areas and prepare reports from time to time. It is more than apparent from the counter affidavit that the Board is not performing its duties and has not taken any stand in the present proceedings also unfortunately, that it even proposes to do so.

10. The counter affidavit is peculiar. It acknowledges violation of Section 21 of the Act. It makes no statement that the Unit has been closed on its direction. It makes no statement with regard to its statutory obligation for prosecution. On the contrary it contends that necessary steps are being taken for closure of the Unit without any explanation what those steps were and why the Unit had not been ordered to be closed down immediately. The counter affidavit does not leave much to the imagination with regard to the reluctance of the Board to perform its duties and enforce the law.

11. The facts of the case reveal a sorry state of affairs. The Board does not carry out inspection at reasonable times of the air pollution control areas. A complaint is filed before it on 27.8.2012 under acknowledgement. Prudence would have dictated that the Board conscious of its obligation and responsibility would have swung into action immediately no sooner that its attention was invited even if it was not aware as claimed by it. There is not even a whisper or apology of an explanation in the counter affidavit why the officials of the Board did not consider it necessary to act upon the representation. After the writ petition was filed on 10.12.2012, finding that it now had no option in the matter a reluctant inspection has been carried out on 3.1.2013 in a half hearted manner.

12. Now that the Board is professed to be seized of the matter it is expected to perform its statutory duties. Nothing in the present order shall be deemed to be adverse to Respondent No. 8 at this stage, but shall not absolve the Board from performing its statutory functions in accordance with law.

13. In (2001) 9 SCC 605 the conduct of the Board in not performing its statutory duties was noticed and directions given to identify non-performers and take actions against them holding as follows:--

6. We fail to understand why the State Pollution Control Board has not taken any action nor inspected the various industries without directions being issued by this Court. It is to be made clear that this statutory authority is required to discharge its functions without there being any directions by this Court. If it fails to discharge its functions by overlooking apparent defaults, no purpose is served in maintaining such statutory board.

9. In view of the aforesaid submissions made by the learned counsel for the parties, we direct the Chief Secretary of the State of Madhya Pradesh as well as the Chairman of the M.P. State Pollution Control Board to find out the officers concerned who have failed to discharge their duties in properly inspecting the various polluting industries and find out whether industries are complying with the provisions of the Act and Rules and to take appropriate action against defaulting officers.

10. Report be submitted to this Court within six weeks. Further, the State Pollution Control Board is directed to take immediate action against M/s. Kedia Leather and Liquor Pvt. Ltd. if it is not complying with the provisions of the Act or the Rules including the Environment (Protection) Rules, 1986.

14. Having noticed the conduct of the Board in the present case also, it is likewise considered proper to direct the Chief Secretary, the State of Bihar, that he shall hold an enquiry himself into the manner in which the Board is functioning where its officers have taken a clear stand that they are under no obligation to perform statutory duties unless there are court orders. The enquiry cannot be restricted to the facts of the present case given the importance of pollution to human life and the right to a pollution free environment under Article 21 of the Constitution combined with the obligation of the State under Articles 48A and 51A(g) of the Constitution. The Chief Secretary shall also submit a report of the proposed action plan to ensure that the Board starts functioning properly and discharges its statutory duties by enforcing the law immediately in all its aspects. The negligence of the officers concerned in the present case shall also be the subject of enquiry alongwith action proposed including why apart from departmental action, punitive action under the penalty provision be not taken against them also as abettors of the offences. The Chief Secretary shall submit a detailed report with regard to the Board alongwith fixation of responsibility at all levels within a period of six weeks when the matter shall be listed under the heading "Orders".

15. The petitioner has also represented before the District Magistrate on 12.5.2012 followed by another on 23.7.2012, the competent authority under the Noise Pollution (Regulation and Control) Rules, 2000 framed under the Environment (Protection) Act, 1986, it is directed to be treated as a complaint under Regulation 7. The Competent Authority is obliged to hear the petitioner and Respondent No. 8 and pass appropriate orders.

16. The official respondents must realize their duties to the citizens and society

in an age today where answerability and accountability of the officers has been emphasized by the Supreme Court in *Delhi Airtech Services Pvt. Ltd. and Another Vs. State of U.P. and Another*, as follows:--

213. These authorities are instrumentalities of the State and the officers are empowered to exercise the power on behalf of the State. Such exercise of power attains greater significance when it arises from the statutory provisions. The level of expectation of timely and just performance of duty is higher, as compared to the cases where the power is executively exercised in discharge of its regular business. Thus all administrative norms and principles of fair performance are applicable to them with equal force, as they are to the Government department, if not with a greater rigour. The well-established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office.

214. In *State of Bihar vs. Subhash Singh*, this Court, in exercise of the powers of judicial review, stated that the doctrine of "full faith and credit" applies to the acts done by the officers in the hierarchy of the State. They have to faithfully discharge their duties to elongate public purpose.

215. The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities. In *Centre for Public interest Litigation vs. Union of India*, this Court declared the dictum that State actions causing loss are actionable under public law. This is a result of innovation, a new tool with the courts which are the protectors of civil liberties of the citizens and would ensure protection against devastating results of State action. The principles of public accountability and transparency in State action are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also not lack bona fides. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable for both their inaction and irresponsible actions. If what ought to have been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of an answerable administration would be satisfied.

216. The doctrine of "full faith and credit" applies to the acts done by the officers. There is a presumptive evidence of regularity in official acts, done or performed, and there should be faithful discharge of duties to elongate public purpose in accordance with the procedure prescribed. Avoidance and delay in decision-making process in Government hierarchy is a matter of growing concern. Sometimes delayed decisions can cause prejudice to the rights of the parties besides there being violation of the statutory rule.

17. The present writ application was primarily raising issues of non-performance of statutory duties by the Board and the competent authority. That is the spirit in which the Court has presently dealt with the matter. The Pollution Control Board

and the Competent Authority are therefore mandated and directed to perform their statutory obligation in accordance with law and pass final appropriate orders and/or actions preferably within a maximum period of two months from the date of receipt and/or presentation of a copy of this order before them respectively. The official respondents are cautioned from post haste actions in violation of the law.

18. A copy of the order be sent to Chief Secretary, State of Bihar for compliance of directions. The writ application stands disposed.