

(2015) 10 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 13214, 13066 and 13067/2014

Omega Test House and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-10-2015

Acts Referred:

Air (Prevention and control of Pollution) Act, 1981 — Section 17(2)

National Greens Tribunal Act, 2010 — Section 14, 29, 30, 38(5)

Water (Prevention and Control of Pollution) Act, 1974 — Section 17, 17(2)

Citation : (2015) 10 RAJ CK 0034

Hon'ble Judges : Alok Sharma, J.

Bench : Single Bench

Advocate : Kamalakar Sharma, Senior Advocate and M.S. Rajpurohit, for the Appellant; Akhil Simlote and S.P. Singh on behalf of Inderjeet Singh, AAG, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—Since all these writ petitions are fundamentally similar, largely with common facts and law in issue, they all are being decided together. The facts are being taken from SBCWP No. 13214/2014, as the lead case.

2. The petitioner firm (hereinafter "the firm") challenges the notification dated 14-10-2014 whereby the Rajasthan State Pollution Control Board (hereinafter "the Board") withdrew with immediate effect its earlier notifications and announced that the Board would thereafter only accept analysis reports from the laboratories, which were recognized by the Ministry of Environment and Forest (MoEF) and Climate Change, Government of India New Delhi (hereinafter "MoEF"). The consequential relief sought in the writ petition is that the respondent Board be restrained from interfering with the peaceful working of the firm earlier recognized by it as a Laboratory with NABL accreditation whose reports were accepted by the Board in performing its function under Section 17 of the Water (Prevention of Control of Pollution) Act, 1974 (hereinafter "the

Water Act") as also under Section 17(2) of the Air (Prevention of Control of Pollution) Act, 1981 (hereinafter "the Air Act").

3. The case of the petitioner firm is that applications being invited by the Board, for empanelment of laboratories for assisting it in the discharge of its functions under the Air and Water Act it, accredited by the National Accreditation Board for Testing and Calibration Laboratories (NABL), sought empanelment as a recognized laboratory and was so empanelled under the Air Act for the purpose of analysis of samples of air or emission of air pollutants as specified and for analysis of sample of water from any stream or very sample or trade effluents as specified under the Water Act. The empanelment was valid till 21-11-2014. The firm claims to have efficiently discharged work assigned to it by its various client industries seeking varied approvals from the Board. No objection to any of the analysis reports of the firm submitted by its client industries to the Board is stated to have been made by the Board. It has been stated that even in an office memorandum issued by the MoEF on the issue of guidelines for recognition of Environmental Laboratories under the Environment (Protection) Act, 1986 (hereinafter "the Act of 1986"), it was an essential requirement that all Environmental Laboratories should either have ISO 17025 NABL Accreditation or ISO 9001 along with OHSAS 18001 (occupational Health and Safety Management System) certification before submission of application for consideration as a recognized Laboratory under the Act of 1986. The petitioner firm states that however the impugned notification dated 14-10-2014 issued by the Board arbitrarily states that analysis reports only of laboratories recognized by the MoEF and Climate Change Government of India, New Delhi would be accepted by it. The recognition of the petitioner firm's laboratory has also been withdrawn. This is a malafide and inexplicable deviation without good cause whatsoever from the memorandum of MoEF itself. It has been alleged that the Board by the impugned notification dated 14-10-2014 only seeks to benefit one Kavita Mathur wife of Bhuvnesh Mathur, who is an employee of respondent Board because her Laboratory alone has been recognized by the MoEF. Denial of principles of natural justice while issuing the impugned notification has also been alleged as a vitiating factor. It has been further submitted that if allowed reasonable time, the petitioner firm could have also obtained recognition of its laboratory from MoEF. In the present it is however suddenly placed in a situation where it is unable to discharge its obligation under its numerous annual and biannual contracts with its clients. Hence the prayers in the writ petition.

4. The respondent Board in reply to the writ petition has submitted that Section 17(2) of both the Water Act and Air Act empowers it to establish or recognize laboratories to enable performance of its functions based on analysis of samples of water and air and other reports. It has been submitted that the power of the Board to recognize laboratories under Section 17(2) of both the Water Act and Air Act is on the face of it, is a matter relating to environment, and as such any dispute in respect thereof is amenable to the jurisdiction of the National Green Tribunal Act, 2010 (hereinafter "the Act of 2010"). Hence, the petitioner firm, if

aggrieved of the impugned notification dated 14-10-2014, entailing derecognition/deempanelment of its laboratory earlier granted, with reference to Section 17(2) of both the Water Act and Air Act is free to approach the National Green Tribunal (hereinafter "the Tribunal") under the Act of 2010 to ventilate its grievance. It has been submitted that Section 14 of the Act of 2010 confers jurisdiction on the Tribunal in respect of all civil cases inter alia where a substantial question relating to environment is involved and when such a question arises out of the implementation of the various enactment specified in schedule I of the Act of 2010. Both the Water Act and Air Act are included in schedule I of the Act of 2010. Reference has been made to the judgment of the Hon"ble Supreme Court in the case of Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India (UOI) and Others, in support of the contention of the Green Tribunal having jurisdiction on all environment related issues and dismissal of the writ petition on the ground of availability of an alternative remedy is sought.

5. On merits of the petition, it has been submitted that recognition of the petitioner firm has since expired on 21-11-2014, and on that count the petition has been rendered infructuous. It has been further submitted that NABL grants accreditation to laboratories for varied purposes some of which have nothing to do with the Environment and the Board is under no obligation to accept that accreditation uncritically in perpetuity. It can and has aspired for higher standards. It has been submitted that even otherwise the firm had no legal right to demand, even while the Board's recognition of its laboratory obtained, that its analysis reports be accepted under the Water Act and Air Act. This aspect is specifically stated as a condition in the recognition notification. The impugned notification dated 14-10-2014 only reiterates that fact. It has been submitted that the Board's expert and considered view is that laboratories with NABL accreditation are not well equipped or capable of working to the highest standards for the purpose of upholding environmental quality which is sought to be achieved by it under the Water Act and Air Act. The Ministry of MoEF and Climate Change Government of India New Delhi grants recognition only to those laboratories which are fully equipped in the field of environment and capable of better discharging duties and analyse matters necessary for the protection of environment with a superior degree of ability, reliability and confidence of the Board. These quality service by laboratories recognized by the MoEF has motivated the Board in issuing the impugned notification dated 14-10-2014 in public interest. It has been contended that in view of the Board's policy decision to accept only analysis reports of MoEF recognised laboratories, allegations of discrimination, malafide and favouritism are a non sequitur and only casually made without any foundation. No material particulars in support have been pleaded and even prima facie established. All laboratories recognized by MoEF can be empanelled. No monopoly can obtain--various empanelments on new standards are in the process. It has been emphasised that the petitioner firm itself is free to obtain MoEF recognition, and will then be considered, but cannot

insist that the lower standard of NABL accreditation be perpetuated by the Board and such laboratories be perforce continued to be recognized by the Board under Section 17(2) of both the Water Act and Air Act. It has been prayed that writ petitions be therefore dismissed.

6. Heard. Considered.

7. The Act of 2010 provides for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases inter alia relating to environmental protection, conservation of forests and other environment related issues. Section 14 of the Act of 2010 provides that the Tribunal would settle all disputes relating to environment arising out of the implementation of the enactments specified in Schedule I of the Act of 2010. The Water Act and Air Act are part of the Schedule-I. The preamble of both the Water and Air Act confers power on the Board to carry out the purposes of the two Act and of matter relating thereto and connected therewith. Any action of the Board on a matter connected to or relating to Air and Water pollutions and even incidental thereto, would thus be a dispute referable to the Tribunal constituted under the Act of 2010. Under Section 17(2) both of the Water Act and Air Act, the State Control Board can in its discretion establish or recognize a laboratory or laboratories to enable it to perform its functions. The matter of recognition and by extension of derecognition of laboratories under Section 17(2) of the Air and Water Act is evidently a matter which is connected and in any event relating to the protection of the environment, as laboratory recognition and their reports have a clear nexus to pollution and the environment. A dispute as to whether or not a laboratory with NABL accreditation is entitled to be recognized under Section 17(2) of both under the Water Act and Air Act, in my considered opinion, is therefore one relating to the environment and is amenable to the jurisdiction of the Tribunal under Section 14 of the Act of 2010. The Hon'ble Supreme Court in the case of Bhopal Gas Peedith Mahila Udyog Sanghthan (supra) has held as under:--

"Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14 , 29 , 30 and 38(5) , it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned."

8. Further, the question as to whether or not a laboratory with NABL certification would suffice for the purpose of facilitating the State Board to discharge its function under both the Water Act and Air Act or as to whether such facilitation

would be better served by the laboratories recognized by MoEF is quite plainly a technical issue having a bearing on the protection of the environment and is in the realm of experts. The National Green Tribunal under Section 14 of the Act of 2010 has been constituted for adjudication of environment related issues which involve a multi disciplinary adjudication. The dispute in the present petition would be appropriately adjudicated by the Green Tribunal.

9. Mr. Simlote, counsel for the respondent Board has also submitted that vide notification dated 22-11-2012, whereby the petitioner firm was recognized under Section 17(2) of both the Water Act and Air Act for a period of two years, it was specifically provided that the recognition was subject to not being considered as a registration of an approved consultant by the Board for any other purpose whatsoever; the Board would not be bound to accept any of the report, data, information furnished by the laboratory, empanelled and on expiry of the validity period of two years, the recognition would stand terminated unless specifically renewed by the State Board. The contention is that the recognition of the laboratory of the petitioner conferred no substantial right on the petitioner firm. And now the change of policy has altered the parameters for recognition and no good ground for interference is made out. The Hon''ble Apex Court in the case of Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others, has held that where a policy is changed, no hearing is required to be given as a matter of law to those benefiting under the earlier policy. In the case of Indian Airlines Officers'' Association Vs. Indian Airlines Ltd. and Others, the Hon''ble Apex Court has stated that principles of natural justice cannot be brought in for the purpose of policy making. Similar principles had also been earlier enunciated in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, . In the context of aforesaid, the argument of Mr. Kamlakar Sharma, in the alternative, that as the impugned notification dated 14-10-2014 has been passed in contravention of principles of natural justice this petition should be entertained, despite availability of alternative remedy, is also untenable and hence rejected.

10. I am thus of the considered view that the objection raised by the counsel for the Board that the writ petitions are not maintainable for the reason that the petitioners have alternative remedy under the Act of 2010 for agitating their grievance is liable to be sustained. It is held that the petitioner firms have alternative remedy under Section 14 of the Act of 2010 and should so avail it. The writ petitions are not maintainable. Dismissed.

11. A copy of the order be placed in each petition.