
(1999) 12 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 432 of 1999

Shiva Gram Udyog Samiti

APPELLANT

Vs

Punjab Pollution Control Board

RESPONDENT

Date of Decision : 02-12-1999

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 31A

Citation : (2000) 126 PLR 397 : (2000) 3 RCR(Civil) 9

Hon'ble Judges : R.S. Mongia, J;J.S. Narang, J

Bench : Division Bench

Advocate : Arun Palli, for the Appellant; Parveen Goyal, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—The petitioner Samiti had started establishing a Rice Shelter in village Dhura. Tehsil Dhuri, District Sangrur. Certain guidelines had been issued by the respondent-Punjab Pollution Control Board (hereinafter referred to as "the Board") on September 10, 1997 (copy annexure P-10) regarding the siting of Rice Shelters etc. laying down a minimum distance from various places like Schools, Municipal Corporation limit, village Phirni etc. It is not disputed that as per September 10, 1997 guidelines issued by the Board, the petitioner's Rice Shelter was not meeting the siting criteria. In these circumstances, the NOC applied by the petitioner was declined by the Board vide order dated February 18, 1998, copy annexure P-7. Even the appeal of the petitioner to the appellate authority was dismissed on March 18, 1998, copy annexure P-8. Probably realising that some Rice Shelters and other such units had already been established or were in the process of being established which were not meeting the siting criteria as laid down in the guidelines dated September 10, 1997, the Board reconsidered the matter and circulated fresh guidelines on the basis of the decision taken in its 98th meeting held on July 29, 1998. The relevant portion, with which we are concerned, may be reproduced:-

"Item No. 98.03 Emission standards and siting guidelines for rice shellers/Saila

Plants.

The Board approved the proposal that all those rice shellers/Saila plants which have been established or were in the process of being established prior to 10.9.1997 and are not meeting with the siting guidelines as notified vide Board notification No. Admn./A2F. No. 178/94/2325 dated 10.9.1997 may be allowed to establish/operate subject to the following conditions:-

- (1) That the concerned Unit will have to provide sufficient proof of its having been established/in the process of establishment prior to 10.9.97.
- (2) That units which had already been established and are in operation should install the adequate pollution control devices and implement the code of practice immediately.
- (3) That the units which have already been established but have not yet started operations shall apply for NOC well before commencing their operations.

The Board further desired that a public notice may be got published in the various newspapers asking such units to apply for the NOC/Consent of the Board within 2 months from the date of publication of the notice. Thereafter, no such applications should be entertained."

2. Vide application dated August 6, 1998, copy annexure P-12, the petitioner on the basis of the aforesaid guidelines applied for reconsideration of matter regarding issue of NOC, which was rejected vide the impugned order dated November 6, 1998, copy annexure P-14, on the ground that the case of the petitioner stood rejected by the Board as well as by the appellate authority prior to the issuance of the fresh guidelines.

3. Learned counsel for the petitioner argued that the petitioner-Rice Shelter unit was almost complete as on September 10, 1997, and the new guidelines would be fully applicable to such units which were in the process of establishment as on September 10, 1997 and the case of the petitioner could not be rejected on the ground as has been noticed above. Learned counsel for the petitioner referred to the report of the Environmental Engineer of the Board pertaining to the petitioner-establishment, which reads as under:-

"The industry was visited on 19.9.97 for the first time when it was found that the construction work of the shelter was almost complete and machinery was under installation. As such it is considered as sufficient proof that the industry was in the process of establishment prior to 10.9.97. It has now provided the proper APCD and has adopted CD of practice.

In view of the decision taken during 98th Board meeting vide its item No. 98.03 the industry becomes eligible for grant of consent to operate. However, the electric connection of the industry has been got disconnected as per the direction issued by the Board u/s 31-A of the Air Act vide H.O. letter No. 5255 dt. 18.2.98 in view of the complaint by the Management of Sarvhitkari Vidya Mandir School

which is situated near to it. In view of above said facts the case is forwarded to H.O. for guiding this office regarding next course of action to be adopted for this particular industry."

4. From the above, it is evident that the industry of the petitioner was in the process of establishment prior to September 10, 1997, and by the time of report was given by the Environmental Engineer, even the proper APCD (Ante pollution control device) had been installed. Learned counsel for the petitioner further submitted that the petitioner Unit would comply with all the conditions as laid down in the subsequent guidelines dated June 29, 1998 which have already been reproduced above.

5. After hearing learned counsel for the parties, we are of the view that the later guidelines would apply even to those units which were in the process of establishment as on September 10, 1997, and the issuance of a NOC to such an establishment which might have been completed later cannot be declined on the ground that their cases had been rejected by the Board prior to the issuance of the guidelines dated July 29, 1998. In fact, the new guidelines were issued irrespective of the fact whether the case had been rejected or not. Otherwise also, according to us, it will not make any difference whether a person had earlier applied for NOC and his case had been rejected and another person who might not have just applied for NOC. Both will sail in the same boat. An establishment, though was not meeting the criteria of the earlier guidelines had not applied for NOC would be considered for NOC under the later guidelines but a person who had actually applied for NOC and his case had been rejected would not be considered for the NOC under the new guidelines. This will be wholly arbitrary. This cannot be the spirit of the new guidelines.

6. For the foregoing reasons, we allow this writ petition and quash the order dated November 6, 1998, copy annexure P-14, and direct the board to consider the issuance of NOC to the petitioner subject to his fulfilling all other legal conditions for the issuance of the NOC. Let this be done within a period of two months.

7. A copy of this order, attested by the Special Secretary, be given to Mr. Parveen Goyal, Advocate for onward transmission to the concerned quarters.