

(2009) 04 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 6590 of 2001

Surinderjit Singh Sindhu and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21, 31, 31A, 4, 5
Assam Air (Prevention and Control of Pollution) Rules, 1991 — Rule 21(2)
Assam Water (Prevention and Control of Pollution) Rules, 1974 — Rule 25, 25(2), 26, 27, 28
Water (Prevention and Control of Pollution) Act, 1974 — Section 16, 17, 18(1), 20(2), 20(3)

Citation : (2009) 3 GLT 175

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : D.K. Bhattacharyya, S. Chakraborty, P. Kataki and G. Sarma, for the Appellant; S. Baruah, for the Respondent

Judgement

H.N. Sarma, J.—The subject matter of challenge in this writ petition is the legality and validity of the order bearing No. PC/ROT/T-440/99-2000/77-503 dated 1.9.01 (Annexure-1 to the writ petition) issued by the Regional Officer, Pollution Control Board, Assam, the Respondent No. 6, by which a direction was issued to the Tea Industry of the Petitioner to stop all the activities forthwith for having violated the provision of The Air (Prevention and Control Pollution) Act, 1981 and The Water (Prevention and Control Pollution) Act, 1974 and a further direction was issued to the Assam State Electricity Board to stop/disconnect the supply of electricity to the Petitioner's tea industry and the Dhekiajuli Municipality was directed to take necessary steps to disconnect supply of water to the industry of the Petitioners.

2. I have heard Mr. D.K. Bhattacharjee, learned Senior Counsel for the Petitioner assisted by Ms. S. Chakraborty, learned Counsel for the Petitioner and Mr. S. Baruah, learned Standing Counsel for the Respondents.

3. The pleaded case of the Petitioners is that the concerned Tea Estate of the Petitioners covers an area of 996 hectares of land out of which 642 hectares is under tea cultivation. Though the Petitioners have a factory for manufacturing tea but it is not used by burning coal and the machines for manufacturing tea is run on electricity and there is remote chance of discharge of any trade effluent or pollutant in the manufacturing process. The Petitioners' tea estate applied for consent form under The Water (Prevention and Control of Pollution) Act, 1974 and The Air (Prevention and Control of Pollution) Act, 1981 for the year 1999-2000 by its letter dated 10.1.2001 enclosing therewith an amount of Rs. 10,770/- and the same was received by the State Pollution Control Board on 12.1.2000. The aforesaid amount included renewal fee required to be paid in applying for the consent under both the aforesaid Acts. The Respondent No. 6, the Regional Officer of the Pollution Control Board raised objection regarding the amount paid by the Petitioners as fee for consent and asserted that the fixed assets and investment at the Tea Estate was over Rs. 5 crores and, accordingly, held that the Petitioners have to pay Rs. 20,000/- yearly as fee as per the amount fixed under the Acts, however, without making any assessment of the assets of the garden through assessors or valuers and thus arrived at the aforesaid figure regarding valuation of the garden vaguely. The Petitioners are paying the consent fee under both the Acts as per the value of assets of the garden which is below Rs. 5 crores, as reflected in the balance sheet of the Petitioner No. 3 who owns the concerned tea estate and the value of the assets such as residential houses, factory premises, machines and other ancillary items required for the purpose of running the industry and tea bushes depreciates. It is also contended that the land value also did not appreciate. The Petitioner vide its communication dated 31.5.2000 intimated the Respondent that the ground on which the assessment of the value of the garden has been made at Rs. 5 crore or above is not acceptable and in arriving at the same value no preliminary enquiry was made nor the Petitioner was given any opportunity before fixing the aforesaid value of the garden. On receipt of the said communication, vide Communication dated 4.7.2000 issued by Respondent No. 5 the Respondent No. 6 called upon the Petitioners to establish the authenticated value of the garden and the Petitioner No. 1 was asked to submit two sets of recent balance sheets with seal and signature of a Chartered Accountant who must be empanelled by the Comptroller and Auditor General of India or to deposit the arrear amount of fees within 20 days, failing which penal actions under the provisions of the concerned Act and Rules were indicated.

The Petitioner was further directed by the said letter to apply separately for consent for diesel generator set and the hospital although those are (not) part of the machinery of the garden and to obtain separate consent for those items, which is not necessary. The Petitioners vide letter dated 20.7.2000 asked the Respondent No. 6 to intimate the basis of arriving about the higher value of the garden and also stated therein that there is no change in the investment pattern of the garden from the earlier years.

4. In pursuance to the said letter, the Respondent No. 6 intimated the Petitioner to the effect that the valuation of the assets of the garden was made from the data and information given by the Petitioners on earlier occasion through their application form for consent. But the Petitioner denied the acceptability of such valuation made on that basis. The Petitioners also dispute the requirement of obtaining the consent, inasmuch as, the garden of the Petitioners undertakes agricultural activities and it has nothing to do with industrial activities.

5. Thereafter, the Petitioner on 26.8.2000 prayed for 30 days time to furnish the authenticated documents/balance sheets signed by the Chartered Accountant approved by CAG/Government of India as called for and eventually the related forms were sent to the Petitioners on 12.9.2001. The Petitioners also raised grievances that the Respondent authorities did not take any sample of air or water or trade effluent before making the Petitioner liable for taking such consent under both the aforesaid Acts. It is further contended that on 21.11.2000 a list of assets of the concerned tea estate was sent by the Petitioner No. 1 signed by the Chartered Accountant of the Company wherein the total value of the assets has been shown as Rs. 4,09,985.73 i.e. below Rs. 5 crores which do not attract the higher slab of fee, as demanded.

6. The Respondent No. 4 also issued a show cause notice on 20.11.2000 to the Petitioners to show cause as to why action u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 should not be taken against them for generating polluted effluent/water and other emissions for running the tea manufacturing process and running the industry without obtaining consent of the Pollution Control Board during the year 1999-2000 and during the current year. The Petitioner failed to reply to the notices issued by Board dated 4.7.2000 and 8.9.2000 and it failed to substantiate the fixation of the valuation of assets not being more than 5 crores against the enquiry made by the Respondent No. 6 and for not producing the authenticated copies of balance sheet signed and sealed by Chartered Accountant empanelled under CAG, Government of India further indicating that thereby it violated the provisions of Water Act, 1974 and asked the Petitioners to show cause as to why further action should not be initiated against the Petitioners as indicated therein. The reply of the Petitioner not being satisfactory, the Respondent No. 5 sought for certain more clarification vide its communication dated 12.2.2001 to which the Petitioner replied on 19.2.2001. Thereafter the Respondents issued the impugned order dated 1.9.2001 without affording further opportunities to the Petitioners.

7. In the premises of the aforesaid pleadings Mr. Bhattacharyya, learned Senior Counsel firstly contends that the impugned order dated 1.9.01 is not an order passed by the Board but it was an order passed by the Regional Officer and in the absence of any delegation of power by the Board, the Regional Officer has no authority to pass such order and, consequently, the impugned order is passed without any jurisdiction. Adding further, it is contended that any decision to take any action u/s 33A of the Water Act and Section 31 of the Air Act is vested upon

the Board only. The Communication of the impugned order by the Regional Officer is also contrary to the provisions of the Rules. The learned Counsel further contended that as there is, infact, no resolution of the Board to issue such directions as contained in the impugned order and there is no basis at all for passing the said order, and as such the same is bad in law. Objection also been raised about the impressibility of issuing a composite order under the Air and Water Act. The learned Counsel strongly submits that the decision of the Respondents to include the Petitioner within the category of investors Rs. 5 crore or more for the purpose of obtaining consent under the provision of Section 25 of the Water Act is illegal, unjust and improper in the absence of any independent assessment regarding the value of assessment of the Petitioner tea estate by the Board and, for that matter, the demand of the Respondents to submit the balance sheet authenticated by Chartered Account empanelled under Comptroller and Auditor General is not provided under the law. It is also contended that for the purpose of assessing the value of the tea estate only the factory and the allied part of the assets are to be considered and value of the tea bushes and other properties of the garden which pertains to agricultural activities are required to be excluded from such consideration.

8. The Respondent Board filed a counter refuting the allegations of the Petitioners. The Respondents contend, inter alia, that the impugned order has been duly passed by the State Pollution Board and the Regional Officer was delegated to issue the order and the impugned order was issued as per the direction of the Member Secretary of the Board. It is also contended that the Petitioner Tea Estate consumes 40 K.L. Furnace Oil per month (5,61,000 litres) as stated in their application for granting consent for the year 1999-2002 which was submitted to the Residential Officer of the Board. That apart, the Petitioner is also operating Diesel Generator Sets and H.S.D. as Fuel which is not contributing to air pollution but also contributing to noise pollution, the Petitioner Industry used around 45,000 litres and 4,500 litres of water during the year 1999-2002 respectively for washing the machines after production is over which generates effluent of 35000 litres and 3500 litres per day, as per the application submitted by them. The trade effluent arising out of the premises during the manufacturing process of the Petitioner was tested and found to be above the prescribed standards. It is contended that on the sample collected from the Petitioner Industry in terms of Section 21 of the Water Act read with Rule 28 disclose that the same crossed the permissible and prescribed limit and the said result was duly communicated to the Petitioner vide letter dated 21.10.2000 and 4.10.2000. The Petitioner did not apply for consent within the period of four months in advance from the date of expiry as required in terms of Rule 25 Schedule I of the Water Act, the period of consent being required to be obtained from 1st April to 31st March of the next year annually. The Petitioner defaulted to apply for such consent in time and only on expiry of nine months on 10.1.2000 applied for such consent leaving only three months to expire the year. The Petitioner also did not furnish the required information and papers in time

regarding its investment.

It is further contended that upon scrutiny of the application form of the Petitioner and the report of M/s Parry Agro Industries Limited it has been observed that the total investment of the Company is Rs. 8771.82 lakhs i.e. around 88 crores on 31.3.1999 and by making necessary arithmetical calculation it is found that the investment of the Petitioner Company falls above the limit of Rs. 5 crores and in this regard, several round of discussions were held with the officers of the Petitioner Tea Estate and though they were requested to pay the consent fee as per investment of Rs. 5 crores slab, they did not pay. It is further contended that vide letter dated 2.11.2001 the Petitioner informed that the total investment of the Company for the year 1999-2000 is Rs. 6,21,88,796.97 which attracts imposition of consent fee fixed for the category of Rs. 5 crores slab. In spite of requests made by the Respondents, the Petitioners did not submit the authenticated documents regarding total investment in the Tea Estate thereby compelling the Respondents to issue the letter dated 4.7.2000 further asking the Petitioners to submit the authenticated balance sheet but that was also not complied with.

Considering the data submitted by the Petitioner from the annual report 1999 annexed with the consent application for the year 1999-2000 and coupled with the fact that the surrounding Tea Estates were also depositing consent fee earmarked for Rs. 5 crores slab and after scrutiny of the Petitioner's letter dated 22.5.2000, the Respondents asked the Petitioners to submit the actual annual consent fee. The Petitioners were also asked to submit a detailed balance sheet signed by Chartered Accountant, CAG to justify their stand vide letter dated 28.3.2000. But in spite of giving assurance to comply with the same vide letter dated 26.8.2000, they did not comply with the same. During the pendency of the writ petition the Petitioners also submitted a balance sheet before the Regional Officer wherefrom also it appears that the investment of the Company i.e. the Petitioner Industry is above Rs. 5 crores. Finding no other alternative and the Petitioners not having produced the required documents in support of their stand, the Board ultimately issued show cause notice dated 20.11.2000 to the Petitioners. Upon receipt of the said show cause notice, the Petitioners submitted some of the investment documents vide letter dated 21.11.2000 which is incomplete in the sense that the value of the land is not incorporated therein as required under law and assigned the value of the assets as Rs. 40,99,89,25.73. The said information being incomplete again the Petitioners were asked to submit the information regarding the value of the land etc. certified by a Chartered Accountant empanelled with CAG but till expiry of nine months, the Petitioners did not furnish such information particularly, regarding the value of the land etc. Consequently, in compliance of provisions of Section 33A of the Water Act and 31A of the Air Act, the impugned order was passed by the authority and there is no illegality or impropriety in passing the said order. The Petitioners have also filed a reply to the said counter.

9. During the course of argument, it is pointed out by Mr. S. Baruah, learned Standing Counsel that in terms of the interim order dated 14.9.2001, the Petitioner Industry has deposited the enhanced rate as it then existed which, however, was further extended vide notification dated 12.11.2003, and accordingly the action proposed as per the order is not taken yet and the Petitioners are operating the garden.

10. Referring to the statements made in counter affidavit and relevant provisions of the Act and Rules, the learned Standing Counsel has submitted that the value of the assets of the Tea Estate in question falls within the slab of Rs. 5 crore and above which has been based mostly on the information received from the papers and documents submitted by the Petitioners themselves and, accordingly, Petitioners are liable to pay the consent fee applicable to the said slab. Since the Petitioners did not pay the same, the Board has no other alternative but to issue the impugned direction for closure of the industry. It is further submitted that in passing the impugned order there is no illegality or irregularity and the Regional Officer of the Board was competent enough and was duly authorized to issue the impugned order.

11. In the wake of the submissions and counter submissions made by the learned Counsel for the parties, the point that precisely falls for consideration is as to whether the impugned order is legally sustainable in law for not being issued by Member Secretary and whether the Respondent No. 6 was empowered by law to issue the impugned order and as to whether the Board was justified in assessing the investment of the industry of the Petitioner to be fallen within the slab of Rs. 5 crore and above under the relevant Rule and to demand accordingly the necessary consent fee.

12. Due to growth of industries and gradual increase of the urbanization, the problem of pollution of air, rivers and streams have now assumed considerable importance. It is now essential to ensure that the domestic and industrial effluents are not allowed to discharge into the water without adequate treatment. Various pollutants resulting from certain human activities are having detrimental effects on the health of the people as also on animal life, vegetation and property. In June, 1972 at the United Nations conference on the Human Environment held at Stockholm wherein India also participated, decisions were taken to take appropriate steps for the preservation of the natural resources of the earth which amongst other things, included preservation of the quality of air and control of air pollution as well as water pollution. Keeping in view of the decisions taken in the said conference, the Government having decided to implement of those decision in so far as it relates to the preservation of the Water or Air and control of such pollution, the Air Act, 1981 and Water Act, 1974 were enacted by the parliament.

13. u/s 3 of the Water Act, the Central Govt. is empowered to constitute a Central Pollution Board with the members mentioned therein for the purpose of carrying out the provisions of the Act. Similarly, Section 4 empowers the State

Government to constitute a State Pollution Board to exercise the powers conferred on and to perform the function assigned on that Board under the Act. Every State Board is a body corporate with the name specified by the State Government having perpetual succession and a common seal with power to acquire and dispose of the property and to contract, subject to the provision of the Act and it may sue in the said name or be sued.

14. Section 17 describes the functions of the State Board whereas the Section 18(1)(b) provides that every State Board shall be bound by any such directions in writing as the Central Government may give to it. Chapter (V) of the Act deals with prevention and control of water pollution. Section 25 imposes restrictions on new outlets and new discharges. Section 25 which has relevance to the issue involved in the present case is quoted herein below:

25. Restrictions on new outlets and new discharges - (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,-

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or

(iii) that the consent will be valid only for such period as may be specified in the order.,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

5. Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

6. Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hour by any person interested in, or affected by such outlet, land or premises, as the case may be, or any person authorized by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

7. The consent referred to in Sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage;

Provided that a person I the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

2. An application for consent of the State Board under Sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

3. The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in Sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

4. The State Board may-

(a) grant its consent referred to in Sub-section (1), subject to such conditions as it may impose, being-

(i) in cases referred to in Clauses (a) and (b) of Sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

application in this behalf complete in all respects to the State Board.

8. For the purposes of this section and Sections 27 and 30,--

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) in substantially altered after such commencement;

(b) the express "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the proceeding

twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

15. Section 33A of the Act empowers the Board to issue any direction in writing to any person or authority including power to direct closure, prohibition or regulation, operation or process or the stoppage or regulation of supply of electricity, water or any other service.

16. Chapter (VII) deals with penalties and procedure. Section 41 prescribes for imposition of penalty for failure to comply with direction or order issued u/s 20(2) (3) or orders issued u/s 32(1) or direction issued u/s 33(2) and 33A of the Act upon those who are found guilty.

Section 47 deals with the offences committed by the companies. Section 49 provides that no court shall take cognizance of any offence except on a complaint made by (a) a Board or any other officer (s) authorised in this behalf or (b) who has given notice of not less than sixty days, in the manner prescribed of the alleged offence and his intention to make a complaint, to the Board or officer authorised as aforesaid. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under the Act.

17. Similarly, under the Air Act, Section 4 recognizes a State Pollution Control Board like that u/s 4 of Water Act, 1974 for its enforcement and such Pollution Control Board constituted under the Water Act shall be deemed to be State Board for all purpose and all intents.

Section 4 of the Air Act is quoted herein below:

State Pollution Control Boards constituted u/s 4 of Act 6 of 1974 to be State Boards under this Act.--In any State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is in force and the State Government has constituted for that State a State Pollution Control Board u/s 4 of that Act, such State Board shall be deemed to be the State Board for the Prevention and Control of Air Pollution constituted u/s 5 of this Act, and accordingly that State Pollution constituted u/s 5 of this Act, and accordingly that State Pollution Control Board shall, without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the State Board for the prevention and control of air pollution under this Act.

18. The powers and function of the Board is described u/s 16 of the Act. u/s 21 of the Air Act also there is similar provision for obtaining consent from the State Board to establish or operate any industrial plant in an air pollution control area as provided u/s 25 of the Water Act.

19. Section 31A of the Air Act make similar provision for issuing directions like that in Section 33A of the Water Act.

20. There is no dispute at the Bar that the Petitioners industry being an existing industry is required to obtain consent from the State Pollution Control Board for the purpose of running the industry. Tea industry is an industry for all intents and purposes and only for the purpose of agricultural income tax, it is covered by separate legislation namely Agricultural Income Tax Act of the State.

Accordingly the rigor and restriction of the enjoyment of rights and privileges upon an industry is squarely applicable to the Petitioners industry. A set of Rules namely, the Water (Prevention and Control of Pollution) Assam Rules, 1974 was framed in exercise of power conferred u/s 64 of the Water Act by the Government of Assam in consultation with the Board. The State Rules prescribes the procedure of transaction of business in the meeting of the Board, powers and duties of the Chairman of the Board and that of the Member Secretary, power and function of the Board u/s 17 of the Act and other related provisions for giving effect to the provisions of the Act.

Rule 25 provides that an application for obtaining consent of the Board, u/s 25 of the Act for continuing an existing industry discharging of sewage, trade effluent shall be made to the Board in Form- "A"-1. In case of existing industries the concerned application is required to be filed giving full particulars of the premises, producing the effluent within 3 months of the constitution of the Board. The application form may be obtained from the office of the Board on payment of Rs. 100/- as application form fee.

As per Section 25(2)(sic) of the application form should be duly accompanied by the consent fee as may be prescribed by the Government and as per Rules 25(2) such fees have been fixed differently for different slab of investment of the industry.

The procedure for obtaining annual consent is provided under Rule 26. Rule 27 prescribes the procedure for making an enquiry into application of consent which empowers the authority to make any such enquiry as it may deem fit and for the purpose of verifying the correctness or otherwise the particulars furnished in the application for obtaining consent and also empowers for obtaining such further particulars or information as such officer may consider necessary.

21. In the instant case, the Petitioners submitted its application for the consent for the year 1999-00 on 12.1.2000 by paying fee of Rs. 10,770/- after expiry of the prescribed period. Although according to the Board, the Petitioners are required to pay the higher amount of consent fee having its assets valued more than 5 crores and though several rounds of discussions were held between the officers of the Petitioners with the Respondent authorities, the consent fee for prescribed slab of 5 crore and above was not paid. In support of the total investment claimed to have been made, the Petitioners could not submit documents before the Board.

Though the Petitioners, vide letter dated 26.8.00 were requested to furnish authenticated balance sheet, the same was not produced and ultimately the show cause notice dated 20.11.00 was issued to the Petitioners. Thereafter on 21.11.00, the Petitioners submitted separate investment document which was not found to be correct and complete as the value of the land of the industry was not included therein. Consequently, upon receipt of the same, the Petitioner were again asked to submit the recent value of the land owned by the garden and the details of capital investment maintenance and development services as referred to in letter dated 17.6.98. But the Petitioners did not furnish the same. However, after filing the writ petition, the Petitioners submitted a summary of the fixed assets of the tea estate as on 31.3.00 vide letter dated 12.11.00. From the said list, it is disclosed that the fixed asset of the tea estate of the Petitioners as on 31.3.00, even according to assessment of the Petitioners was found to be Rs. 6,28,90,177.97.

22. The aforesaid situation clearly discloses that the industry of the Petitioners clearly falls within the slab of above 5 crores and the Board within the parameter of the provision of the Act and Rules is entitled to demand the consent fee which is payable under the aforesaid slab alongwith application for consent. The Petitioners not having paid the requisite consent fee, their prayer for consent could not be considered and accordingly, in compliance of the provision of Section 25 of the Act, direction as contained in the impugned order was issued u/s 33A of the Act.

23. The further grievance of the Petitioner is to the effect that the Regional Officer of Respondents, who issued the impugned order, was not authorized to do so and it is contended by Mr. Bhattacharyya, the learned Senior Counsel for the Petitioners that for all intends and purposes, the impugned order was passed and issued by the Regional Officer is contrary to the provision of the Act and Rules.

24. The record so produced by Mr. Baruah, the learned Standing Counsel, Pollution Control Board disclose that in fact the direction contained in the impugned order was passed by the Member Secretary of the Board on 20.8.01 after consideration of the relevant facts. Further in terms of the minute of meeting of the Board under item No. 21, read with office order dated 18.4.94, the power to issue direction u/s 31 and 33A of the Act was also duly delegated to the Respondent No. 6.

In view of the aforesaid situation, the submission that Respondent No. 6 was not empowered or authorized to issue the impugned order does not hold good.

25. The additional submission made by Mr. Bhattacharyya, the learned Senior Counsel that the composite order under the Air and Water Act is not permissible under the provision of law, has been considered thoroughly in the light of the provision of Section 4 of the Air Act.

Admittedly, the State Pollution Board having been constituted u/s 4 of the Water Act, the State Board also has got the jurisdictional authority to deal with the

provision of Air Act in terms of the Section 4 of the Air Act as quoted hereinabove. On that count also the impugned order can not be faulted with.

26. A faint argument has also been made to the effect that the Central Act not having provided for payment of consent fee, the provision of Rule prescribing in such fee for obtaining consent is ultra-vires to that effect. Rule 25(v) framed under the Water Act, and 21(2) of the Air Act clearly provide for payment of such consent fee as may be prescribed. The payment of such consent fee is a part of statutory obligation of the Petitioners, to be complied with when an application for consent is filed. Both the Act and the Rules having made such provision for payment of the consent fee, the Petitioners cannot be permitted to withhold or refuse to pay such consent fee. In fact, the Petitioner had already paid such consent fee but at a lesser amount than it is required to be paid as per value of the investment which falls above 5 crores slab.

27. From a careful scrutiny and in the light of the above discussion, I hold that the impugned order is found to have been passed within the parameter of the jurisdictional authority as prescribed under the Act and the Rules and as such the attack made by the Petitioners challenging the validity of the impugned order is not sustainable.

28. Lastly, it is contended by Mr. Bhattacharyya that in terms of the interim order dated 14.9.01, the Petitioners are paying the consent fee payable above the slab of Rs. 5 crores and such payment having been made, the impugned order may be kept in abeyance.

29. Mr. S. Sarma, learned Standing Counsel has submitted that in the meantime the consent fee has further been enhanced by the Board w.e.f. 12.11.03 and the Petitioner is required to pay consent fee from the aforesaid date at further enhanced rate as mentioned in notification dated 12.11.03.

30. Although, I do not find any legal or factual fault in passing the impugned order since the tea industry is a human manpower oriented industry and the Petitioners are paying the consent fee payable to an industry falling within the slab of Rs. 5 crore till date, in fitness of things and interest of justice, it is directed that the impugned order shall remain inoperative in the event the Petitioners pay the consent fee payable to an industry falling at slab of 5 crores or above, at such rate as may be prescribed by the Board from time to time.

In the event of not making such payment by the Petitioners, the impugned order dated 1.9.01 passed by the Respondent would remain operative.

31. With the above direction and observation, this writ petition stands finally disposed of. The parties are left to bear their own costs.