

(2015) 02 KL CK 0106

In the High Court Of Kerala

Case No : Writ Petition (C) No. 1670 of 2015 (G)

T.M. Fathimma Beevi and Others

APPELLANT

Vs

Kerala State Pollution Control Board and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

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

Constitution of India, 1950 — Article 226

Water (Prevention and Control of Pollution) Act, 1974 — Section 33A

Citation : (2015) 02 KL CK 0106

Hon'ble Judges : P.R. Ramachandra Menon, J.

Bench : Single Bench

Advocate : T.I. Abdul Salam and Philip T. Varghese, for the Appellant; M. Ajay, S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—Ext. P29 closure intention notice, followed by Ext. P30 closure order passed under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, to stop all operations and processes in the industry with immediate effect and Ext. P31 communication issued by the Electricity Board, whereby power supply was disconnected on 09.01.2015, pursuant to the direction given by the Pollution Control Board based on Ext. P13, are under challenge in this writ petition.

2. The 2nd petitioner is the son of the 1st petitioner. The 1st petitioner is running an industry styled as a "Rubber Processing Unit" in the Chemical Industrial Estate, Aroor in Alappuzha District. The said unit was functioning under the licence issued by the 4th respondent/Rubber Board as per Exts. P1 and P2 and that the same is stated as in existence from 1983. The petitioners' unit was being run on the basis of valid consent issued by the 1st respondent Pollution Control Board as per Exts. P3 and P4, licence issued by the Department of Factories and Boilers vide Ext. P5 and the licence issued by the local authority

vide Exts. P6 and P7.

3. According to the petitioners, the latex and skim rubber are processed to make skim crepe in the unit and that the special licence has been issued by the 4th respondent to the said process. Ext. P27 is the renewed licence issued by the Department of Factories and Boilers, Kollam and Ext. P28 is the licence issued by the local authority. In the course of operation as above, the petitioners were served with Ext. P8 show-cause by the 3rd respondent, referring to some incriminating circumstances, which stands replied as per Ext. P9. Several further notices were issued and the petitioners have responded to such notices, explaining the facts and circumstances and pointing out that there was no default or lapse on the part of the petitioners. Later, the petitioners were served with Ext. P17 show-cause notice dated 23.03.2012 issued by the 3rd respondent, as to why directions under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 shall not be issued to have the unit closed down. The petitioners submitted Ext. P18 explanation dated 18.04.2012. However, without any regard to the same and even without affording an opportunity of hearing to the petitioners, Ext. P19 order dated 04.05.2012 was passed, simply closing down the petitioners' unit quite abruptly, which is allegedly based on a Circular issued by the 2nd respondent as Ext. P21. The petitioners approached this Court by filing WP(C) No. 12763 of 2012 challenging Ext. P19 order and Ext. P21 Circular. This Court observed that, there was infringement of the fundamental principle of "audi alteram partem" and that the petitioners were entitled to have an opportunity of hearing, before any order was passed. It was also observed by this Court that, under what circumstances was it felt necessary to have issued Ext. P21 Circular, was not discernible from the same. Accordingly, the writ petition was disposed of as per Ext. P25 judgment dated 31.01.2013, whereby both Exts. P19 order and Ext. P21 Circular were quashed and the Pollution Control Board was directed to reconsider the matter and pass a proper order, after affording an opportunity of hearing to the petitioners.

4. In furtherance to the above verdict, the matter was considered by the 2nd respondent, who passed Ext. P26 order dated 06.04.2013. As per Ext. P26 order, the 2nd respondent found that serum was the effluent, generated during latex centrifuging and the creamed latex separated from latex and that disposal of untreated serum from latex industries into water bodies caused contamination of water bodies in the State. Consents were being issued to Latex Centrifuging Units with strict condition to treat the serum generated during the process, along with other waste water generated in the units, in their own effluent treatment plant, to achieve the effective quality standard before discharge and that, if the latex centrifuging units dispose/ sell serum to an external agency, there was environmental threat and that the same was not a permissible activity. That apart, serum contained only 3% or below rubber content and the rest was waste water with High BOD and hence was not economical to process such huge volume of waste water in a tiny unit, as a raw material. It was also observed

that, at present, there was no scope of getting serum from centrifuged latex units, since the Board had not issued consent under the Water Act to dispose the serum through any other external units, as it had to be disposed only through the "own effluent treatment plants" of the agencies. It was accordingly that, the application with fee was ordered to be returned with specific remarks regarding the raw material (serum).

5. However, on the basis of the requests of the unit's representative, an opinion was sought to be obtained from the 4th respondent Rubber Board and the Central Pollution Control Board, whether the serum generated from latex centrifuging units could be used/considered as a raw material for further processing in other units, rather than the same processed in the centrifuged latex units, where it is generated.

6. The petitioners contend that, by virtue of the nature of the order passed by the 2nd respondent vide Ext. P26, the matter has not become final. While so, the 3rd respondent issued Ext. P29 show-cause notice as to the order proposed to be issued under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 for closure of the unit, directing the petitioners to submit objections, if any, within fifteen days. The said notice was issued only on 31.12.2014. But even before expiry of the period of fifteen days to submit the objections, the unit was ordered to be closed down as per Ext. P30 order dated 06.01.2015, followed by disconnection of electricity effected on 09.01.2015 as evident from Ext. P31, which in turn are under challenge.

7. The learned counsel for the petitioners submits that, the proceedings pursued by the respondents are per se wrong and illegal in all respects, also in violation of the fundamental principles of natural justice, having denied an opportunity to submit objections and further that, abrupt closure of the unit has quite adversely affected the survival of the petitioners and the workers, also causing huge loss, which hence is sought to be intercepted by this Court.

8. The learned Standing Counsel appearing for the respondent Pollution Control Board submits that, there is absolutely no merit or bonafides in the case projected by the petitioners and that the unit was being run quite unauthorisedly, without any valid consent/licence. It is also pointed out that Exts. P2 and P3 consents issued by the Board expired long back and after issuance of Ext. P8 show cause notice to the petitioners on 19.03.2010, further steps were taken and the unit was ordered to be closed down in the year 2010 itself. The said order was never challenged by the petitioners and it was without getting any further consent, that the unit was being run quite unauthorisedly; thus in violation of all relevant provisions of law, causing much threat to the environment, on diverting the untreated serum to the water bodies. It is also pointed out that, the unauthorised running of the unit was taken up by the aggrieved parties of the locality, by approaching the National Green Tribunal, Southern Zone, Chennai, by filing application No. 371/2013 (SZ) (THC). It is stated that the Pollution Control Board has already filed a detailed Counter

Affidavit dated 06.01.2015 in the said case, also producing copies of all the relevant documents.

9. The learned Standing Counsel for the Pollution Control Board made available copies of the extracts of the orders passed by the Tribunal on various dates from 08.05.2014, which are extracted below for convenience of reference:

"08.05.2014

Pursuant to an order of transfer of the WP(C) No. 12070 of 2013 from the Hon"ble High Court of Kerala at Ernakulam, this matter has been taken up in the Registry as Application No. 372 of 2013 (SZ). After looking into the averments made, the Tribunal is able to see a substantial question connected to and concerned with environment and ecology. The application is admitted.

Srimathi Suvitha A.S., counsel waives notice for respondent No. 2 and undertakes to file memo of appearance. Shri. M. Ajay, counsel waives notice and undertakes to appear for respondent No. 4. Notice is ordered to all other respondents and the applicant.

The matter is posted to 01.08.2014.

01.08.2014

No representation for the applicant. Mrs. Suvitha A.S., the counsel filed memo of appearance for the 2nd respondent. Mrs. Rema Smirithi, the counsel filed memo of appearance for the 4th respondent. The 3rd respondent appeared and filed reply. Fresh notice is ordered to the 1st respondent. For filing reply, and appearance of the 1st respondent, the matter is posted to 12.09.2014.

12.08.2014

No representation for the applicant. Mr. Prince Premkumar, the counsel filed Vakalat for the 1st respondent, Mr. S. Venugopal, Secretary, Aroor Grama Panchayat has already filed reply. The counsel for the respondents 1,2 and 4 seek further time for filing reply. For filing reply of the respondents 1,2 and 4, the matter is posted to 27.11.2014.

27.11.2014

No representation for the applicant. The counsel for the respondents 1 to 4 seek further time for filing reply. The counsel for the 4th respondent would submit that the matter has got to be disposed of in view of the order of closure made by the Kerala State Pollution Control Board as against the industry against whom the complaints are made. For dismissal, the matter is posted to 12.12.2014.

12.12.2014

The counsel for the respondents are present. They seek further time for filing reply. In view of the fact that there was no representation for the application in the last few hearings, the matter is posted for dismissal. Even this day also there

is no representation for the applicant. However, it is brought to the notice of the Tribunal in the last hearing that a closure order was served upon the Unit and hence it has to be recorded. This day the learned counsel for the Board would submit that though a closure Notice which was followed by the closure order was served on the Unit in the year 2010, it was found subsequently that the Unit was operating. Under the circumstances, the matter has got to be kept pending. After hearing the counsel for the Kerala State Pollution Control Board (Board), it would be quite evident that despite the closure order that too served in the year 2010, the Unit has been functioning. Hence the District Environmental Engineer concerned is directed to inspect the Unit on the facts as to when the closure order was served and subsequently from which period the Unit has been functioning/ operating and if so, what action was taken thereon by the Board and file a report in the next hearing before this Tribunal. All the respondents are directed to file their reply on that day. The matter is posted to 09.01.2015.

09.01.2015 (wrongly typed as 09.12.2015)

No representation for the applicant. It was brought to the notice of the Tribunal in the last hearing that a closure order was served upon the 1st respondent industry in the year 2010 despite the same, 1st respondent industry was carrying on its operation. After recording the statement, the Tribunal made an order directing the Kerala State Pollution Control Board, District Environmental Engineer concerned to file a report whether the 1st respondent industry carried on its operation despite the closure order and if so, what action was taken against the industry. The counsel for the Board this day would submit an order of closure is again served on the industry that would clearly indicative of the fact that the industry has been operating despite the closure order in the year 2010. Hence, it becomes necessary to issue a direction to the Chairman, Kerala Pollution Control Board to personally look into the matter and see the provisions of law strictly enforced in order to give effective closure order and report before the Tribunal in the next hearing. The matter is posted to 09.03.2015."

10. From the above, it is clear that, the right to run the petitioners" unit is pending consideration before the National Green Tribunal, Chennai and the petitioners have already entered appearance. It is also seen that, it was pursuant to the above turn of events and the positive directions issued by the Tribunal that the respondent Board implemented closure of the unit as per Ext. P30 order dated 06.01.2015 followed by disruption of the electricity supply vide Ext. P31 order dated 09.01.2015. The petitioners have not produce any document before this Court to show that they are having the valid consent to operate as on date.

In the said circumstances, this is not a fit case to call for interference, invoking the discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

The writ petition stands dismissed accordingly, however without prejudice to the rights and liberties of the petitioners to pursue the matter before the National

Green Tribunal, Chennai, where the issue is pending.