

आदेश की क्रम सं०
और तारीख
1

आदेश और पदाधिकारी का हस्ताक्षर
2

आदेश पर की गई
कार्रवाई के बारे में
टिप्पणी तारीख सहित
3

Board of Revenue, Bihar, Patna

Pollution Case No. 15 of 2023

Dist.:- Patna.

**PRESENT :- Sri Chaitanya Prasad, I.A.S.,
Chairman-Cum-Member.**

M/S Muskaan Event Management
And Caterers PVT. LTD.

- Petitioner/ Appellant

Versus

The Bihar State Pollution Control Board

- Respondent/ Opp. Party

Appearance :

For the Appellant : Manisha Pandey, Advocate.

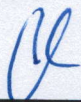
For the Respondent : Sri Abhimanyu Singh, Advocate.


JUDGMENT

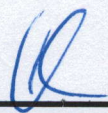
The instant appeal has been filed under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 read with Section 28 of the Water (Prevention and Control of Pollution) Act, 1974, challenging the order dated 27.03.2023 contained in letter no. 516, dated 27.03.2023, issued under the signature of the Member Secretary, Bihar State Pollution Control Board(herein after referred to as State Board), Patna, whereby the Consent-to-Establish application bearing no. 7196004, dated 23.01.2023, made by the applicant has been refused by the Bihar State Pollution Control Board.

The factual matrix of the instant case is that a public complaint dated 13.07.2022 was made to the State Board alleging therein that due to operation of the unit of the appellant, air, noise and water pollution is being caused in the

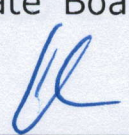
15.04.2024


आदेश की क्रम सं० और तारीख 1	आदेश और पदाधिकारी का हस्ताक्षर 2	आदेश पर की गई कार्रवाई के बारे में टिप्पणी तारीख सहित 3
	<p>area. In light of the public complaint, the unit of the appellant was inspected by the officials of the State Board on 21.07.2022 and found to be operational without valid Consent of the State Board and there were DG sets, the exhaust of which were directed towards residential house and the unit of the appellant was found to be located amidst habitation and the Effluent Treatment Plant (ETP) was not installed. The State Board in light of the findings of the inspection report, issued a 'Proposed Direction for Closure' in exercise of the powers under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, and Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, to the appellant vide its Memo No. 2452, dated 27.07.2022, wherein the appellant was given an opportunity to file its objection to the State Board's action of directing closure of the appellant unit.</p> <p>The appellant availed the opportunity and replied to the State Board's 'Proposed Direction for Closure' vide its letter dated 08.08.2022, wherein the appellant contended that they are amenable to Section 21 of the Air Act and Section 25 of the Water Act and not required to obtain Consent from the State Board. The State Board finding the reply of the appellant not satisfactory, issued 'Direction for Closure' to the appellant in exercise of the powers under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, and Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, to the appellant vide its Memo No. 3013, dated 16.09.2022, wherein the appellant was directed to 'Close and</p> 	

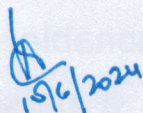
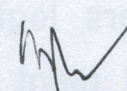
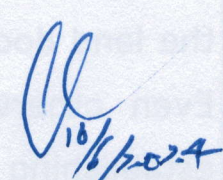
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	<p>Stop the operation of the appellant's unit' with immediate effect.</p> <p>The 'Direction for Closure' was challenged before the Hon'ble Patna High Court through CWJC No. 352 of 2023, which came to be disposed of vide order dated 24.01.2023, by which the appellant was directed to remove the defects.</p> <p>The appellant thereafter filed an application for Consent-to-Establish before the State Board dated 23.01.2023. On considering the consent application of the appellant the State Board demanded mandatory valid land documents from the appellant, the appellant failed to provide valid land document to the State Board, thereafter show-cause notice was issued to the appellant to provide valid land document. However, the appellant failed to provide the valid land document and accordingly the consent application of the appellant came to be refused for want of mandatory valid land documents.</p> <p>The State Board filed its counter affidavit dated 24.09.2023 and the appellant chose not to file any rejoinder to it.</p> <p>The learned counsel for the appellant submits that he entered and established its unit on the land pursuant to the execution of a registered lease agreement dated 16.05.2011 for a period of Ten Years w.e.f 01.07.2010. Thereafter, he operated the establishment for the period of 10 years and upon expiry of the lease period the lease period was not renewed and there were also differences with the Lessor and the Lessor has also preferred Title Eviction Suit No. 22 of 2021</p> 	

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	<p>which is pending before the Learned Civil Court, Patna. It is admitted by the appellant that Consent under the Water Act and Air Act has never been obtained by the appellant for establishing and operating the said unit. It is prayed by the appellant that the State Board be directed to grant Consent to the appellant without valid land documents and subject to the outcome of the Title Eviction Suit No. 22 of 2021. It is further submitted by the learned counsel of the appellant that the unit of the appellant is a White Category unit as per the categorization of the industries issued by the Central Pollution Control Board, New Delhi.</p> <p>On the other hand the learned counsel of the State Board submits that the <i>bona fide</i> of the appellant is questionable as after issuance of the 'Direction for Closure' in the month of September, 2022, and after passing sufficient time the appellant continued to operate its unit with impunity and only after sealing of the unit of the appellant in January, 2023 by the District Administration, Patna, the appellant moved before the Hon'ble Patna High Court challenging the 'Direction for Closure'. The learned counsel of the State Board suggests that the <i>bona fide</i> of the appellant is not proved.</p> <p>On merits, he submits that the refusal of the Consent application of the appellant is justified and in accordance with law. He further, while referring to the Counter Affidavit of the State Board, submits that the requirement of Valid Land Paper is a mandatory/necessary precursor for Grant of Consent as land paper is a mandatory requirement under the statute as</p> 	

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	<p>Section 64 of the Water Act gives power to the State Government to make Rules with respect to matters as provided in Sub-Clause of Section 64. The State Government in exercise of powers under Section 64 made the Water (Prevention and Control of Pollution) Rules, 1986, under which Rule 22 provides for the relevant form for 'Application for Consent Under sub-section (2) of Section 25 of the Water Act & Rule 24 provides for the procedure for making enquiry into such application and Rule 24 (3) provides that an officer of the State Board may direct an applicant to furnish information, clarification or documents necessary for the purpose. The form prescribed for making an application contains particulars relating to the Land on which the industrial unit is to be established and operated.</p> <p>He further submits that since 2016 the Consent application processing of the State Board has been made online and the Consent application were considered through online integrated system, i.e., 'Online Consent Management and Monitoring System' (OCMMS). Through the said online system, any person desirous of making an application to the State Board may make an application by creating a User Id in the OCMMS. In the online form at one stage the applicant is supposed to upload documents as mentioned in the form and as may be required on case to case basis. However, three documents, i.e, Affidavit, Land Document & Project Report, are marked with red asterisk and at the foot of the said webpage it is categorically mentioned that the documents</p>	

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	<p>marked with red asterisk are Mandatory Documents. Therefore, it is vehemently submitted by the learned counsel that the Land Documents are Mandatory Documents for grant of consent, having statutory force and the State Board is bound under the statute to direct an applicant to furnish proper valid land document and otherwise to refuse the consent and that the requirement of Land Paper for consideration of application for consent is a statutory requirement and not a mere discretionary requirement. He further submits that Title Eviction Suit is another proceeding and the present proceeding is different proceeding under the special act. Both are exclusive and the decision in this order has no influence on the Title Eviction Suit and Vice Versa.</p> <p>He further submits that, Hotels/Banquets/Restaurants is categorized under Red; Orange and Green category depending on its size and waste generation. Hotels having overall waste - water generation @ 100 KLD and more is categorised under Red category; Hotels (< 3 star) or hotels having > 20 rooms and less than 100 rooms is categorised under Orange category and Hotels (up to 20 rooms and without boilers) is categorised under Green category. The appellant unit has applied for consent under the Orange Category.</p> <p>Heard both the parties and examined the records. The question which primarily arises for consideration is that whether the State Board is correct in refusing the consent application for want of valid land documents? In this regard, para 7 of the counter affidavit of the State Board becomes</p> 	

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	<p>relevant wherein it has been stated that the Water (Prevention and Control of Pollution) Rules, 1986, framed by the State Government in exercise of its powers under Section 64 of the Water (Prevention and Control of Pollution) Act, 1974, becomes relevant as Rule 22 of the Rules, 1986, provides for the form to be filled for the purpose of making application for consent and the form includes entries like details of land premises; site plan; the name of the owner of the land/premises if other than the applicant. Also, in para 9 of the Counter Affidavit it is stated that the consent application processing of the State Board was made online in the year 2016 and the form available on the webpage denotes mandatory documents by red asterisk mark and three documents containing red asterisk are Affidavit; Land Document and Project Report. A webpage is annexed as Annexure R/2 to the Counter Affidavit which clearly shows that the land document/lease document is a mandatory document. Even otherwise it appears logical and reasonable that for establishing an industrial plant over a land, a person must come and remain in possession of the said land legally and the State Board cannot grant any person consent to establish or consent to operate a unit on a land on which a person cannot provide lawful/ legal document has entered wrongfully. In above view of the matter, the appellate authority holds that valid land document/Lease document is a necessary document for grant of Consent by the State Board. With respect to other submission of the appellant that the unit of the appellant is a</p> 	

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	<p>'white category unit' is also misconceived as the appellant has themselves applied for consent before the State Board under the Orange Category and as detailed above the appellant unit falls in Orange Category or Green Category but definitely not White Category, as we have carefully examined the list of white category units and the establishment of appellant is not included in the list of white category unit.</p> <p>Further, with respect to prayer made by the appellant, to allow the appellant unit to function till the disposal of the Title Eviction Suit is wholly misconceived as the appellant unit cannot be permitted to operate without a valid Consent and valid lease document is a necessary precursor for grant of Consent and therefore this authority cannot permit an illegal act.</p> <p>In view of the above discussion, this appeal is accordingly dismissed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end; margin-top: 20px;"> <div style="text-align: center;">  Secretary Environment, Forest & Climate Change Department, Bihar. </div> <div style="text-align: center;">  Additional Chief Secretary Industries Department, Bihar. </div> <div style="text-align: center;">  Chairman-Cum-Member Board of Revenue, Bihar. </div> </div>	