

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**

**AT JAMMU**

Pronounced on : 29.10.2022

**WP(C) No. 102/2021**

**CM Nos. 568/2021 & 7518/2021**

**M/s S. S. Industries, Shanker  
Colony, Gangayal**

**..... Petitioner**

**Through: Mr. Anil Sethi, Advocate &  
Mr. Rajat Sudan, Advocate**

**Vs**

**UT of J&K and others**

**..... Respondents**

**Through: Mr. Ravinder Gupta, AAG for R- 1 and 4  
Mr. Dewakar Sharma, Dy. AG**

**Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**JUDGMENT**

**1)** Heard learned counsel for the parties, perused the pleadings along with the annexures thereto and also the original record produced by the respondent no. 2 concerning the matter.

**2)** The petitioner, ever since its coming into existence as a business concern, seems to be bent upon to act more in conflict mood rather than in conformity mode with the provisions of law governing pollution related permissions for the purpose of running an industrial concern and for

that has even felt no hesitation to hoodwink the authorities concerned and even this court as well.

3) The petitioner is claimed to be a proprietorship concern set up by its promotor Sumit Kour and which got itself registered on 12.01.2018 as a Micro Scale Industrial Unit. For the purpose of site for its industry related activity, the petitioner came to hire on rent basis a ground-floor accommodation of building situated at Plot no. 529, backside of Chinar Biscuit, Shankar Colony, Gangyal Jammu. The premises hired by the petitioner on lease basis is from the husband of its proprietor Smt. Sumit Kour. The petitioner intended to carry on manufacturing of Polythene Carry-bags (above 50 microns specification) .

4) For the purpose of carrying on such industrial activity, the petitioner was required to avail pollution related permissions from the J&K State Pollution Control Board and for that purpose on 26.09.2018 applied online for consent to establish (CTE) followed by an online application filed on 06.10.2018 for consent to operate (CTO) before the respondent no. 2. Both the said applications came to be rejected by the respondent no. 2 vide its decisions dated 21.01.2019 and 02.02.2019 on the premise that the industrial activity of the nature intended to be run by the petitioner was not allowed in a non-conforming/residential areas.

5) It appears that notwithstanding the rejection of its request for issuance of consent to establish & operate its industrial activity, the petitioner ventured to start and run the industrial activity which immediately got the attention of the respondent no. 2 resulting in an inspection raid on 31.01.2019 which led to seizure of 1350 kgs of banned polythene bags from the premises of the petitioner. This inspection and seizure of the petitioner's premises by the respondent no. 2's officials was carried out by reference to the provisions of the Jammu and Kashmir Non-Biodegradable Material (Management, Handling and Disposal) Act, 2007 read with rules frame thereunder vide SRO 122 of 2009 dated 11.05.2009 known as J&K Non-Biodegradable Material (Management, Handling and Disposal) Rules, 2009, further amended vide SRO 45 of 2017 dated 03.02.2017 laying down Plastic Waste Management Rules, 2016 whereby there is a ban on manufacturing of polythene carry bags below 50 microns thickness.

6) Upon the seizure of the polythene bags of the quantity of 1350 kg, the Authorized Officer (Regional Director) of the respondent no. 2 came to serve a notice no. SPCB/19/1535-39 dated 06.02.2019 to the petitioner's proprietor for appearance on 27.02.2019 as part of statutory exercise required in furtherance of seizure so made by the Enforcement Wing (Anti-Polythene Team) of

the respondent no. 2.

7) Finding the petitioner acting in conflict with the pollution related provisions of law, the respondent no. 2, vide its order no. 24-SPCB/2019 dated 15.05.2019, came to issue a closure order of the petitioner's unit/premises thereby bringing the unauthorised industrial activity of the petitioner to a cease.

8) In furtherance of the seizure of the 1350 kg of banned polythene bags effected on 31.01.2019, said seized property came to suffer confiscation by an order no. SPCD/RDJ/18/1/4770-73 dated 25.05.2019 passed by the Authorized Officer (Regional Director) of the respondent no. 2. It is worth mentioning herein that this order of confiscation was never ever questioned/challenged at any point of time by the petitioner.

9) On the other hand, in furtherance of closure order no. 24-SPCB/2019 dated 15.05.2019 against the petitioner's unit/premises, the official concerned of the respondent no. 2 came to direct, by virtue of an order dated 01.06.2020 the Sub-Divisional Magistrate, Jammu (South), to close down the premises of the petitioner.

10) The petitioner had come to file a writ petition WP(C) no. 1013/2020 before this Court thereby challenging closure order no. 24-SPCB/2019 dated 15.05.2019 passed by the respondent no. 3 read with direction dated

01.06.2020 to the Sub-Divisional Magistrate, Jammu (South) for the physical closure of the premises of the petitioner.

11) Said writ petition WP(C) no. 1013/2020 came to be dealt with and disposed by this Court vide its judgement dated 22.06.2022 wherein this Court by very clear and categoric observations came to held that without necessary clearance from the Pollution Control Board, be it consent to establish or consent to operate, the unit which has the potential of creating water and air pollution cannot be allowed to operate and that the petitioner was operating the unit without there being necessary clearances from the respondent no. 2 herein and as such its operation were required to be stopped forthwith.

12) Thus, the writ petition WP(C) no. 1013/2020 of the petitioner failed to dislodge the closure order no. 24-SPCB/2019 dated 15.05.2019. However, this Court in terms of its judgement dated 22.06.2020 came to direct the respondent no. 2 to consider application of the petitioner for issuance of requisite consent to establish and consent to operate orders and the same was to be done within a period of four weeks from the date of passing of judgment dated 22.06.2020. A fact insists to be put on mention here that the petitioner in the present writ petition has totally blacked out the fact of having filed the said WP(C) no. 1013/2020 before this Court and having failed to earn

relief against closure order no. 24-SPCB/2019 dated 15.05.2019.

**13)** Acting in deference to the directions of this Court, as given vide judgement dated 22.06.2020 in WP(C) no. 1013/2020, the respondent no. 2 came to consider the matter for requisite pollution related permissions with respect to the petitioner and vide its order no. 17-JK PCB of 2020 dated 17.07.2020 rejected the application of the petitioner for grant of requisite permissions. This order no. 17-JK PCB of 2020 dated 17.07.2020 has not been questioned till date by the petitioner and there is no whisper of reference to the said order in the present writ petition lest any challenge thereto. Without any challenge to the said order dated 17-JK PCB of 2020 dated 17.07.2020, the act on the part of the petitioner in coming to file the present writ petition is nothing but an act of brazenness, to say the least, expecting this court to let the petitioner run its industrial activity without pollution related prior permissions.

**14)** In a sense, the present writ is for a mandamus unto the respondents to let the petitioner act in violation of the law. In fact, nothing could be more self-defeating the cause of the petitioner than the representation dated 21.09.2020 submitted by the petitioner's proprietor Summit Kour accompanied with her affidavit dated 31.08.2020 sworn on 01.09.2020, whereby the proprietor of the petitioner has

admitted the acts of omission and commission on its part and tendering an unconditional apology for the production of polythene carry bags of less than 50 microns specification which being a banned article to be manufactured by anyone.

15) While on the one hand, the petitioner through its promoter was seeking to engage the attention of the respondent no. 2 and its officials with reference to the representation dated 01.09.2020, the petitioner kept on stealthily operating the unit which action got the attention of the authorities of the respondent no. 2 and the second raid came to take place on 20.12.2020 of the premises of the petitioner by the enforcement team of the respondent no. 2 which resulted in second time seizure of 3025 kgs of banned and illegal polythene carry bags less than 50 microns and re-cycled polythene granules.

16) This seizure was followed with issuance of notice no. PCB/RDJ/A.O./20/5594-96 dated 22.12.2020 from the Authorized Officer (Regional Director) of the respondent no. 2 to the petitioner for appearance on 09.01.2021 with respect to the confiscation proceedings to take place. Above said notice was amended with a corrigendum dated 29.12.2020.

17) From the perusal of the writ petition it is not forthcoming at all as to whether the petitioner engaged

itself in the manufacturing activity of paper napkins and HM/LD Polythene Bags (above 50 microns) with any due and proper permission of the State Pollution Control Board. The omission to address any averment on this aspect by the petitioner in its writ petition in a sense amounts to a latent admission that the petitioner was not having any such pollution related requisite permission/authority/approval from the respondents' end. That being so, it may not lie at the service of the petitioner to register any grievance to be heard in support of grievance grant against the issuance of the Order no. 24-SPCB/2019 dated 15.05.2019. It goes without any saying that in case the petitioner can have due permission/authority/approval from the State Pollution Control Board authorities for the purpose of running its manufacturing unit, then the same can be run on the basis of permission so sought and possessed by the petitioner, but in the absence of such permission, the petitioner cannot be heard to insist that Order no. 24-SPCB/2019 dated 15.05.2019 is bad because of any procedural deficiency or non-compliance and that is why its previous writ petition WP(C) no. 1013/2020 had met its failure. The onus was and is always to be upon the petitioner to show as to how without seeking the requisite permission/authority/approval from the respondent no. 2-Pollution Control Board, it can afford to run its business activity which otherwise requires the pollution related



permission.

**18)** It is in the background of the aforesaid facts and circumstances that the petitioner's venture to file the present writ petition is, infact a very crafty move as the petitioner has sought to link the original closure order no. 24-SPCB/2019 dated 15.05.2019 of the respondent no. 2 and co-relate it with the events of second raid pursuant to which notice no. PCB/RDJ/A.O./20/5594-96 dated 22.12.2020 relating to seizure of 3025 bags of banned polythene bags along with recycled polythene granules were seized from the premises of the petitioner, and thereby challenge the two through the present writ petition.

**19)** This Court laboured itself to read the present writ petition of the petitioner for the sake of reference as to whether the petitioner has made a reference about the fact of having filed first writ petition WP(C) no. 1013/2020 and its disposal by this Court in terms of judgment dated 22.06.2020, but the present writ petition is found maintaining a stone like silence with respect to the said aspect and that fact itself is nothing but a statement on the mindset of the petitioner's owner/promoter that for the sake of running the petitioner's business the modus operandi is by hook or crook be it with the law enforcement authorities or even with the court of law. Such a blatant serious suppression as well as misrepresentation of facts

on the part of the petitioner stretching to the extent of repeat of challenge to the Closure Order no. 24-SPCB/2019 dated 15.05.2019 which was upheld by this Court in the writ petition WP(C) no. 1013/2020 of the petitioner and still for the petitioner to come forward in the present writ petition and claim as no. 2 relief as writ of certiorari quashing the order no. 24-SPCB/2019 dated 15.05.2019 of the respondent no. 2 is nothing but a brazen abuse of process of law from the consequences of which the petitioner cannot escape without bearing the corresponding exemplary costs. This suppression as well as misrepresentation of fact obviously was meant to save the present writ petition from suffering the bar of res judicata and as such is the sole basis constituting the dismissal of the present writ petition of the petitioner notwithstanding any clamouring of the petitioner that it has been denied an opportunity of hearing before the issuance of the impugned orders.

**20) Patience to put up with the violations and the violators of the ecological environment has now run dry. The law needs to take charge, and in fact has taken charge, of the situation to deal with the environment related violations and violators impatiently and for that the enforcers of the law need to be fast paced as in the present case where the law enforcers have acted with promptness and pre-emptively and this is what is**

**serving the call of duty to protect the environment. Present time in which the human society has come to drive itself, notwithstanding the credit and claim of growth and development achieved and attained in the course by it, it has now become every living person's first business, without any exception, to protect and preserve the very ecological environment within which and by use of which the human society, irrespective of country wise identification, was able to journey from time of physical challenge to comfort times of the present. Time is not only running short but perhaps it may not be an exaggeration to say that the time has already run short for the human society so as to afford and allow any further pricking and poking, to be done by any man and woman through his/her acts of omission and commission, to the already endangered ecological environment. Thus, it is now for the man to mend his business to save the earth's environment than for the Environment to mind for the man's business. In fact, pressed and driven by the environment protection exigency even the law makers could not escape from naming the legislation enacted by them relating to the environment by any other expression than a clarion title which is "the Environment (Protection) Act, 1986".**

**21) The Hon'ble Supreme Court of India, being in the**

**forefront, in almost every case/cause dealt or being dealt with by it relating to environment & pollution related, and matter is letting no moment to go waste in confirming and reconfirming that the law is positioning itself to be on the side of the Environment than on the side of the Man. Activation and enforcement of environmental pollution related legal regime meant to curb the very tendency to act in avoidance/violation of pollution related norms and forms has to earn the legal backing of the courts of law including the constitutional courts in country like India where instinct and tendency to obey law is more on omission side than on commission side even with respect to a personal safety meant legal norm of wearing of helmet for a person driving two-wheeler.**

22) Insofar as, with respect to confiscation proceedings in terms of Notice no. PCB/RDJ/A.O./20/5594-96 dated 22.12.2020 it is not known as to whether the respondent no. 2 has carried out final adjudication to order the confiscation of the seized goods but in case the same has not been done then surely the petitioner needs to be called upon by the respondent no. 2 to present its case in opposition to the confiscation and upon hearing the objections to pass the final order. It goes without any reminder to the respondent no. 2 that the notice to the petitioner for appearance and state its case in the

confiscation proceedings shall be properly and timely served so as to deny any scope of objection to the petitioner that it was not served timely and properly by the respondent no. 2.

23) In the backdrop of the above referred facts and circumstances and the perspective evaluated by this court, the present writ petition is dismissed with costs of Rs. 20,000/- (twenty thousands) against the petitioner to be paid within period of one month next.

24) Records be also given back to Mr. Diwakar Sharma, Dy. AG

**(Rahul Bharti)**  
**Judge**

**Jammu**  
**29.10.2022**  
Muneesh

Whether the order is speaking : Yes

Whether the order is reportable: Yes