

GAHC010088832023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/32/2023

NOC FOUNDATION
NEW OPPORTUNITY FOR CHILDREN,
AN NGO OF COMPREHENSIVE WELFARE WITH THE PRIMARY FOCUS ON
THE PROBLEMS OF THE POOR IN THEIR STRUGGLE TO OBTAIN A LIFE OF
JUSTICE AND DIGNITY. PROVIDE FREE EDUCATION, ENVIRONMENT
STABILIZATION, FOOD SECURITY AND EMPOWERMENT OF THE
COMMUNITY AND FOR THE DEVELOPMENT OF DISADVANTAGED
CHILDREN/ WOMEN,
HAVING NITI AYOJ UNIQUE ID NO. DL/2017/0156468, REPRESENTED BY
ITS FOUNDER AND GENERAL SECRETARY,

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT,
ASSAM SECRETARIAT, A- BLOCK,
3RD FLOOR, DISPUR, GUWAHATI- 781006.

2:THE POLLUTION CONTROL BOARD
ASSAM
BAMUNIMADAM
GUWAHATI- 781021

REPRESENTED BY ITS CHAIRMAN.

3:THE MEMBER SECRETARY
POLLUTION CONTROL BOARD

ASSAM
BAMUNIM Aidam
GUWAHATI- 781021.

4:M/S M M CARBON PRODUCTS PVT LTD
REPRESENTED BY ITS DIRECTOR
SMT DIPIKA BORA

P.O.- DISPUR
P.S.- BHANGAGARH

GUWAHATI- 781005

AND HAVING ITS REGISTERED OFFICES AT THE SAME AFORESTATED
ADDRESS

Advocate for the Petitioner : MR. K N CHOUDHURY, SR. ADVOCATE
ASSISTED BY MR. N. GAUTAM, ADVOCATE

Advocate for the Respondent : MR. D. SAIKIA, AG, ASSAM
MR. S. BARUAH, SC, PCB, ASSAM
MR. K. P. PATHAK, SC. FOREST

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 11.05.2023

Heard the learned counsel representing the petitioner.

The petitioner has filed the instant writ petition in the nature of Public Interest Litigation questioning the decision of the respondent no. 2, i.e. Pollution Control Board, Assam, in granting consent to respondent no. 4 to set up a 'Red category' industry (Calcined Petroleum Coke, hereinafter referred to as "CPC" for short) at

Amingaon, Guwahati.

Shri K. N. Choudhury, learned senior counsel representing the petitioner drew the court's attention to the Notification dated 17.02.2018 (Annexure-7), issued by the Pollution Control Board, Assam, indicating that it has been decided not to allow any further expansion of the existing CPC Units as well as setting up of new CPC industry within the State of Assam. However, the existing CPC industries have been allowed to run their industries with all pollution control devices which are to meet the standards as stipulated by the Pollution Control Board, Assam. Attention of the court is also drawn to the communication dated 27.01.2022 (Annexure-8), issued by the Pollution Control Board, Assam, whereby similar application submitted by M/s Shyam Carbon LLP, Guwahati, seeking approval to set up a new CPC industry was rejected. It was further submitted by Sri K. N. Choudhury, learned senior counsel, that the respondent no. 4 applied for setting up such CPC unit in the year 2012 and consent was granted vide letter dated 10.12.2012 (Annexure-10), which was valid for a period of one year only as per Clause 17 of the letter dated 10.12.2012. The petitioner has alleged that after receiving consent for setting up CPC industry in the year 2012, no further action was taken by the respondent no. 4 in pursuance of this consent letter and, thus, according to the petitioner the validity of the consent letter expired after one year. The respondent no. 4 thereafter filed a fresh application, bearing No. 474359 dated 24.03.2021 (Annexure-9) for grant of consent to establish a CPC unit at Amingaon, Guwahati. The said application has been treated by the Pollution Control Board, Assam, as a prayer for extension the consent given to the respondent no. 4 in the year 2012 and, vide letter dated 31.12.2022 (Annexure-10A) consent has been granted by the Pollution Control Board, Assam, to the respondent no. 4 set up a new CPC unit at Amingaon, Guwahati, which is under challenge in this PIL.

We are of the *prima facie* opinion that the matter requires further consideration, because the Pollution Control Board, once having taken a decision not to allow establishment of "Red category" industry in Assam from 17.02.2018, cannot be

allowed to change its stance at this stage.

Thus, issue notice to the respondents.

No formal steps for service of notice upon respondent nos. 1, 2 and 3 are required to be taken as Mr. D. Saikia, learned Advocate General, Assam, has put in appearance on their behalf. Thus, steps for service of notice upon respondent no. 4 be taken within three days from today. Thereafter, process be issued to such respondent.

Dasti service is also permitted.

Rule is made returnable in two weeks.

Till the next date fixed, *status quo*, as it exists today shall be maintained in respect of the industry in question.

List again on **25.05.2023**.

JUDGE

CHIEF JUSTICE

Comparing Assistant