

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WP-ASDB-LD-VC-69 / 20

WRIT PETITION (ST.) NO. OF 2020

Reliable Sizing Works and others ... Petitioners  
Vs.  
State of Maharashtra and others ... Respondents

Mr. Manoj Harit i/b. M/s. Manoj Harit & Co. for Petitioners.  
Ms. Neha Bhide, AGP for Respondents-State.  
Mr. R. V. Govilkar a/w. Mr. Mihir Govilkar for Respondent Nos.2 and 3.

**CORAM : UJJAL BHUYAN &  
RIYAZ I. CHAGLA, JJ.**

**Reserved on : JUNE 26, 2020**

**Pronounced on : JULY 7, 2020**

**P.C. :**

Heard learned counsel for the parties.

2. On 23.06.2020, we had passed the following order:

“1. Learned counsel for the petitioners submits that after the last order dated 9<sup>th</sup> June, 2020, there has been some development in this case in as much as respondent No.2 has informed petitioners that it is agreeable to conditional restarting of the industrial units of the petitioners.

2. If that be so, then the writ petition itself can be disposed of on that basis.

3. Learned counsel for respondent Nos.2 and 3 to obtain instructions and place the same before the court on the next date.

4. Stand over to 26<sup>th</sup> June, 2020 alongwith Item No.13, as prayed for.”

3. On the next date i.e. on 26.06.2020, Mr. Govilkar, learned counsel for respondent Nos.2 and 3 submitted on instructions that it is not possible on the part of a statutory body like the Maharashtra Pollution Control Board to simply allow the industrial units of the petitioners to operate despite violation of norms.

4. At this stage, Mr. Harit submitted that the impugned notices dated 18.05.2020 issued by the Maharashtra Pollution Control Board (“Board” hereinafter) are wholly illegal and arbitrary besides being oppressive. There is no violation of any of the conditions imposed while granting consent to operate. On the alleged ground that industrial units of the petitioners are located in non-conforming zone, respondent Nos.2 and 3 could not have withheld issuance of extension or fresh consent to operate the industrial units. This is not one of the grounds for refusing consent to operate. That apart, issuance of such show cause notice that too by providing only 15 days' time limit for reply during this pandemic reflects a totally mechanical approach of respondent Nos.2 and 3. Getting reports from NEERI or IIT, Mumbai within such a short span of time during this pandemic is impossible. He, therefore, submitted that impugned show cause notices dated 18.05.2020 may be stayed and respondents may be directed not to take any coercive steps like disconnection of electricity, water and other basic amenities to the industrial units of the petitioner.

5. Mr. Govilkar, learned counsel for respondent Nos.2 and 3 has opposed admission of the writ petition as well as prayer for stay. He submitted that in compliance with the principles of natural justice, the impugned show cause notices have been issued. It is for the petitioners to respond to the show cause notices and satisfy the statutory authority about the fulfillment of conditions for grant of consent to operate. Therefore, the writ petition is premature. He has placed reliance on the affidavit filed by the said respondents.

6. Submissions made by learned counsel for the parties have been considered.

7. Petitioners are textile entrepreneurs engaged in the activity of sizing of yarn which is used for manufacturing of grey cloth.

8. There are altogether 62 show cause notices, all dated 18.05.2020, which have been impugned in the present writ petition. All the impugned show cause notices dated 18.05.2020 are for refusal of application for consent to operate under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (“the Water Act” hereinafter) and the Air (Prevention and Control of Pollution) Act, 1981 (“the Air Act” hereinafter). All the show cause notices are identical. Therefore, one of the show cause notices may be taken up for consideration.

9. The show cause notice issued to Reliable Sizing Works is taken as a sample copy. It has been issued by the Regional Officer, Nashik, Maharashtra Pollution Control Board, Regional Office, Nashik.

9.1. It is stated that M/s. Reliable Sizing Works had applied for grant of consent to operate under section 26 of the Water Act and under section 21 of the Air Act. It is further stated that Malegaon Municipal Corporation (Corporation) had informed that the said M/s. Reliable Sizing Works was operating its industry in non-conforming zone. Regional Officer also referred to an order of the National Green Tribunal dated 21.01.2020 in Original Application No.359 of 2019 (*Mohammad Yusuf Abdullah Shaikh Vs. State of Maharashtra*) to the effect that industries in non-conforming area are to be removed.

9.2. It is further stated that M/s. Reliable Sizing Works have been called upon to submit adequacy report of pollution control system from NEERI / IIT, Mumbai and also to submit necessary permission (NOC) issued by the City Engineer of the Corporation with recommendation to operate the industry in the said location. Therefore, M/s. Reliable Sizing Works has been called upon to show cause within 15 days as to why its application for consent to operate shall not be refused under the provisions of the Water Act and the Air Act.

10. Respondent Nos.2 and 3 in their common affidavit has placed

reliance on the order of the National Green Tribunal dated 21.01.2020. As per the said order National Green Tribunal directed taking of effective steps to enforce the law and stringent monitoring for protection of environment. In this connection, need for co-ordination amongst different agencies was stressed upon so as to ensure that the plastic related activities units, sizing units, yarn dyeing units, etc. are removed from non-conforming area.

10.1. It is further stated that Board had issued closure directions on 03.09.2019 to such industrial units. This was followed by orders of sealing passed by the Corporation. These were challenged by the petitioners before this Court by filing Writ Petition No.3327 of 2020. This Court passed order dated 11.03.2020 directing the Board and the Corporation to complete the exercise of verification in accordance with law within the next three months. It is stated that pursuant to the said order dated 11.03.2020, Board had requested the Corporation vide letter dated 18.03.2020 to submit the present status with respect to industrial units located in conforming / non-conforming area with recommendation for grant of consent to operate. Reply of the Corporation is still awaited.

10.2. It is stated that the impugned show cause notices have been issued as per statutory requirement and to comply with the principles of natural justice with the clarification that upon receipt of adequacy report from NEERI / IIT, Mumbai and status report from the Corporation, Board will consider the applications for grant of consent.

11. Section 25 of the Water Act deals with restrictions on new outlets and new discharges. As per sub-section (1) subject to the provisions of this section, no person shall without the previous consent of the Board, establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land; or bring into use any new or altered outlet for the discharge of

sewage; or begin to make any new discharge of sewage. Sub-section (2) deals with submission of application for obtaining such consent. Sub-section (3) mandates the Board to hold enquiry on receipt of application for consent. Under sub-section (4), the Board may grant consent or refuse such consent. If the consent is granted, it will be subject to such conditions as may be imposed and for such period, as may be specified. The conditions so imposed shall be binding on the person concerned. In case of refusal to grant consent, reasons shall have to be recorded in writing. Sub-section (5) deals with a situation where any industry etc. is established without the consent of the Board. In such a situation, the Board may serve a notice on the person concerned imposing such conditions as might have been imposed on an application for consent. Sub-section (6) provides for maintenance and inspection of a register by the Board containing particulars of the conditions imposed. As per sub-section (7), the consent referred to in sub-section (1) unless given or refused earlier shall be deemed to have been given unconditionally on the expiry of four months of the making of the application.

12. Section 33A gives general power to the Board to give directions. It says that notwithstanding anything contained in any other law but subject to the provisions of the Water Act and any directions of the Central Government, a Board may in the exercise of its powers and performance of its functions under the Water Act issue any directions in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such directions. As per the *Explanation*, power to issue directions under section 33A includes the power to direct closure, prohibition or regulation of any industry, operation or process; or the stoppage or regulation of supply of electricity, water or any other service.

13. Likewise section 21 of the Air Act deals with restrictions on use of certain industrial plants. As per sub-section (1), subject to the provisions of the said section, no person shall establish or operate any

industrial plant in an air pollution control area without the previous consent of the Board. Sub-section (2) deals with application for consent and sub-section (3) mandates holding of enquiry by the Board on receipt of application for consent in terms of sub-section (1). Under sub-section (4), within a period of four months after receipt of the application for consent, the Board shall by order in writing and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order or refuse such consent. As per the first *proviso*, it shall be open to the Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled. However, the second *proviso* mandates that before cancelling a consent or refusing a further consent, a reasonable opportunity shall be given to the person concerned. Sub-section (5) lays down the conditions which every person to whom consent has been granted by the Board shall have to be complied. Sub-section (6) deals with a situation which may arise on account of technological improvement which is however not relevant for the present case. Again sub-section (7) deals with a situation where a person who was granted the original consent transfers his interest in the industry to any other person. This provision is also not relevant.

14. Similar to section 33A of the Water Act, section 31A of the Air Act deals with general power of the Board to give directions. It says that notwithstanding anything contained in any other law but subject to the provisions of the Air Act and to any directions of the Central Government, a Board may in the exercise of its powers and performance of its functions under the Act issue any directions in writing to any person, officer or authority and such person, officer or authority shall be bound to comply with such directions. As per the *Explanation*, power to issue directions under section 31A includes the power to direct the closure, prohibition or regulation of any industry, operation or process; or the stoppage or regulation of supply of electricity, water or any other

service.

15. It is not the case of the Board that petitioners have not complied with the conditions under section 25(4) of the Water Act and section 21(5) of the Air Act. The power to direct closure or regulate operation of an industry under section 33A of the Water Act and section 31A of the Air Act are subject to provisions of the respective Acts. Though these two provisions start with a *non obstante* clause, the same is *vis-a-vis* any other law but subject to the provisions of the two Acts. In other words, section 33A of the Water Act and section 31A of the Air Act are governed by the provisions of the respective two Acts. It is not an unguided power to be exercised *dehors* the provisions of the two Acts. That apart, as per affidavit of respondent Nos.2 and 3, reply from the Corporation regarding verification of existence of industrial units within non-conforming zone is still awaited. In such circumstances, Board ought to have sought for further time from this Court to comply with the directions dated 11.03.2020. Instead of doing that, the Board straightway issued the impugned show cause notices.

16. That being the position, a *prima facie* view can be taken that the impugned show cause notices have been issued without jurisdiction and that too hastily.

17. In the course of the hearing, learned counsel for the petitioners has brought to the notice of the Court, circular of the Board dated 01.03.2016 regarding implementation of enforcement policy. As per the Board's notification dated 29.02.2016, Board will carry out cumulative and comprehensive environmental impact study in appropriate cases to identify various factors responsible for causing damage to the environment through reputed institutions like IIT, Powai; NEERI, etc. to decide remedial and restoration measures. Board has also taken effective measures with regard to "*Make-in-India Initiative*" under the State of Maharashtra for expediting statutory permissions like, auto renewal

scheme on the basis of self certification applicable for all category of industries, more particularly for green and orange category industries; besides refusal of consent or revocation of consent shall be taken up only when there is continual non-compliance in spite of sufficient opportunities and extension of time granted by the Board.

18. Considering the above, let a notice be issued, returnable within 6 (six) weeks.

19. Since parties are represented, issuance of formal notice stands obviated.

20. Having heard learned counsel for the parties and considering the above, impugned notices dated 18.05.2020 are hereby stayed. Respondents are directed not to take any coercive action against the industrial units of the petitioners. Besides, pendency of the writ petition and the stay order will not come in the way of the Board in examining afresh the applications of the petitioners for granting consent to operate their industrial units in accordance with law.

21. Stand over to 18.08.2020.

22. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**(RIYAZ I. CHAGLA, J.)**

**(UJJAL BHUYAN, J.)**

*Minal Parab*