

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION NO. 11208 OF 2006

BETWEEN

A.P. Pollution Control Board,
Hyderabad.

.....

Petitioner

And

M/s Kiran Enterprises, Hyderabad & others.

.....**Respondents**

::O R D E R ::

Counsel for the Petitioner : Shri S.V. Bhatt

Counsel for Respondent No.1 : Shri V.
Viswanatham

Counsel for Respondent No.2 : Shri M. Sreeramulu
Reddy

Counsel for Respondent No.3 : None

Counsel for Respondent No.4 : Government Pleader
for Forests

Dated: 30.06.2006

Per G.S. SINGHVI, CJ

In this petition filed under Article 226 of the Constitution, the Andhra Pradesh Pollution Control Board (for short 'the Board') has prayed for setting aside a portion of order dated 16.05.2006 vide which the Appellate Authority constituted under Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act') and Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act'), while dismissing the appeal filed by respondent No.1 against the closure order, granted liberty to it to continue to operate for a period of three months.

Respondent No.1 is an industrial unit engaged in manufacture of battery plates and lead oxide. Its location is within 10 K.Ms. radius of Osman Sagar and Himayath Sagar lakes and in the catchment of Noor Mohammed Kunta. In terms of Section 25 read with Section 26 of the Water Act and Section 21 read with Section 22 of the Air Act, respondent No.1 was required to obtain consent of the Board before setting up the industrial unit, but it is operating without obtaining the requisite consent. By an order dated

1-11-1996, the Board directed closure of the industry of respondent No.1 and also directed the Andhra Pradesh State Electricity Board to disconnect the power supply to respondent No.1. That order was stayed by the High Court in W.P.M.P.No.30459 of 1996 in Writ Petition No.24660 of 1996. After about ten years, the Board issued notice dated 06.04.2006 proposing closure of the unit of respondent No.1 under Section 33(A) of the Water Act read with Section 31(A) of the Air Act on

the ground of causing air and water pollution. The representative of respondent No.1 was directed to appear before the Task Force Committee constituted by the State Government in the light of the directions given by the Supreme Court in C.A.Nos. 368-371 and 373 of 1998. For the sake of convenient reference, paragraphs 1 to 8 of the show cause notice are extracted below:

“1) You are operating your industry at 7-3-134/1/A, Old Kurnool Rd., Kattedan, and engaged in the processing of Lead. The industry is located within 10 KM radius of Osmansagar and Himayatsagar lakes, and is in the catchment of Noor Mohammed Kunta.

2) You are operating the industry without obtaining the mandatory consents of the Board under Section 25/26 of Water (Prevention and Control of Pollution) Act, 1974 and 21/22 of Air (Prevention and Control of Pollution) Act, 1981.

3) Vide reference 1st cited the Hon’ble Supreme Court in its order dated 01.12.2000 in Special Leave Petition in C.A.Nos.368-371 and 373 of 1998 related to M/s Surana Oils and Derivates directed the Govt. of Andhra Pradesh to take action in consultation with APPCB to prevent pollution to the drinking water in these two reservoirs. “The State and the Board shall not permit any polluting industry within the 10 KM radius”.

4) The Government of Andhra Pradesh constituted High Power Committee to implement the orders dated 01.12.2000 of Hon’ble Supreme Court. The High Power Committee met on 19.02.2003 under the Chairmanship of Secretary, Industries & Commerce Department, Government of Andhra Pradesh. The High Power Committee on consideration of all the relevant facts, directions of the Hon’ble Supreme Court resolved that concerted efforts should be made in future to relocate the industries in a planned way under the supervision

of Industries Department and A.P. Pollution Control Board. Thereby, the decision to relocate has been taken and intimated to the Hon'ble Supreme Court. In view of the above, the Hon'ble Supreme Court was pleased to close the C.A. Nos. 368-373 of 1999.

5) Vide reference 2nd cited, the Local Area Environment Committee (LAEC) constituted by Supreme Court Monitoring Committee observed the follows:

“The Kattedan Industrial Estate set up by Andhra Pradesh Industrial Infrastructure Corporation (APIIC) early 1970s, houses many polluting industries like Textile Dying & Printing Industries, Edible Oil Refineries, Lead Extraction Units, Waster Oil Reclamation Units etc. Due to the absence of Common Effluent Treatment Plant (ETP) and lack of adequate ETP facilities in the individual industrial units, coupled with the slackness in enforcement of the provisions of the Water Act, 1974, Kattenda Lake (Noor Mohammed Kunta) had been used, during the last 20 to 25 years, for disposal of untreated or under-treated or diluted industrial effluents. As a result the lake has been highly polluted by effluents that originated from the industrial estate and is filled with hazardous wastes from several years of dumping. Today its waters are pinkish and turbid, emanating obnoxious odour apart from polluting the Ground Waters in the area and the water bodies down stream.”

6) The Supreme Court Monitoring Committee (SCMC) constituted by Hon'ble Supreme Court vide reference 3rd cited, has issued following directions, to AP Pollution Control Board:

“In relation to Kattedan Lake, the SCMC accepts the recommendation of LAEC, Hyderabad and hereby directs the AP Government and APPCB as under:

- (a) "The APPCB and the State Government are requested to take suitable action in accordance with Sections 43 and 44 of The Water (Prevention and Control of Pollution) Act, 1974, Sr.No.26 of Schedule-I of the Hazardous Wastes (Management and Handling) Rules, 1989 (as amended May 2003) and Section 133(b) of Criminal Procedure Code, 1973, against the four Textile Processing Units in Kattedan Industrial Estate, who are identified to be discharging their effluents illegally into Noor Mohd. Kunta, to ensure that further illegal discharges into Noor Mohd. Kunta are stopped latest by end May 2005. Directions given by the AP High Court order dated 02.04.1999 and Supreme Court Order dated 01.12.2000 in C.A.Nos. 368-373 of 1999 are also to be considered."
- (b) The units recycling waste materials like Used Oils, Used Batteries, Plastic Scrap, Used PVC etc. operating in Kattedan Industrial Area and not conforming to the provisions Rules 19, 20 and 21 of the Hazardous Wastes Rules shall be closed with immediate effect in terms of the order dated 14.10.2003.
- (c) The edible oil refinery units operating in Kattedan Industrial Estate be directed to change over to less water intensive and cleaner technologies such as physical refining in consultation with IICT and illegal discharge of their effluents into Noor Mohd. Kunta should be stopped forthwith.
- 7) Vide reference 4th cited, the Board officials inspected all the lead processing units including your unit during August and September 2005 and observed the following:
- (a) The units are operating without the valid consents of the Board as required under Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981.
- (b) The units also do not have the valid authorization of the Board as required under Hazardous Wastes

(Management & Handling) Rules, 1989.

(c) The lead processing units located in the catchment area of Noor Mohammed Kunta are unauthorized and the emissions along with solid waste generated from the Industries have led to high lead concentrations in the sediment/soil/ground water of Noor Mohammed Kunta catchment area making it highly contaminated. The same is reported by the NGRI/NGI in its reports.

8) National Geophysical Research Institute (NGRI), Hyderabad in association with Norwegian Geo Technical Institute (NGI), Oslo, Norway also conducted a study on "Soil and Ground Water Contamination: Sources, Transport, Fate, Risk and Remediation" on Noor Mohd. Kunta during 2002-2005 and published their findings in Feb, 2006. Their findings indicate lead concentration in Sediments/Soil as 79-2000 mg/Kg, which is higher than the standard of CPCB (50mg/kg). The other metals such as Chromium, Copper, Arsenic, Nickel, Zinc & Cadmium were also found in higher concentrations in the sediments. It is necessary to state that the emissions and the solid waste from the subject industry generate high Lead concentrations and the same is observed by the NGRI in the sediments of Noor Mohd. Kunta. Further, the Noor Mohd. Kunta is irretrievably lost and hence it is decided to protect the Noor Mohd. Kunta by taking up remediation of lake thereafter."

The representative of respondent No.1 could not explain or justify operating of the industry without obtaining the requisite consent. Therefore, vide order dated 17.04.2006, the Board ordered closure of the unit of respondent No.1. Paragraphs 6 to 8, 11 and 12 of that order read as under:

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vide reference 3rd cited, has issued following directions, to AP Pollution Control Board:

“In relation to Kattedan Lake, the SCMC accepts the recommendations of LAEC, Hyderabad and hereby directs the AP Government and APPCB as under:

- (a) “The APPCB and the State Government are requested to take suitable action in accordance with Sections 43 and 44 of The Water (Prevention and Control of Pollution) Act, 1974, Sr.No.26 of Schedule-I of the Hazardous Wastes (Management and Handling) Rules, 1989 (as amended May 2003) and Section 133(b) of Criminal Procedure Code, 1973, against the four Textile Processing Units in Kattedan Industrial Estate, who are identified to be discharging their effluents illegally into Noor Mohd. Kunta, to ensure that further illegal discharges into Noor Mohd. Kunta are stopped latest by end May 2005. Directions given by the AP High Court order dated 02.04.1999 and Supreme Court Order dated 01.12.2000 in C.A.Nos. 368-373 of 1999 are also to be considered.”
 - (b) The units recycling waste materials like Used Oils, Used Batteries, Plastic Scrap, Used PVC etc. operating in Kattedan Industrial Area and not conforming to the provisions Rules 19, 20 and 21 of the Hazardous Wastes Rules shall be closed with immediate effect in terms of the order dated 14.10.2003.
 - (c) The edible oil refinery units operating in Kattedan Industrial Estate be directed to change over to less water intensive and cleaner technologies such as physical refining in consultation with IICT and illegal discharge of their effluents into Noor Mohd. Kunta should be stopped forthwith.
- 7) Vide reference 4th cited, the Board officials inspected all the lead processing units including your unit during August and September 2005 and

observed the following:

- (a) The units are operating without the valid consents of the Board as required under Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981.
- (b) The units also do not have the valid authorization of the Board as required under Hazardous Wastes (Management & Handling) Rules, 1989.
- (c) The lead processing units located in the catchment area of Noor Mohammed Kunta are unauthorized and the emissions along with solid waste generated from the Industries have led to high lead concentrations in the sediment/soil/ground water of Noor Mohammed Kunta catchment area making it highly contaminated. The same is reported by the NGRI/NGI in its reports.

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11) After careful consideration of the material facts of the case, the Board is of the firm opinion that you are operating the industry unauthorizedly and also causing severe Air and Water pollution in the area. Under the powers vested with the AP Pollution Control Board under Sections 33(A) of the Water (Prevention and Control of Pollution) Amendment Act, 1988 and Section 31(A) of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for the reasons discussed above, **the Board hereby issues Closure orders and directs dismantling of the illegal and unauthorized unit** in the interest of protecting public health and environment.

12) You are directed to take note that if you continue to operate your industry after receipt of this order, you will be liable for prosecution under Section 41(2) of Water (Prevention and Control of Pollution) Amendment Act, 1988 and under Section 37(1) of Air (Prevention and Control of Pollution) Amendment Act, 1987 the punishment for which includes imprisonment for a term which shall not be less than one year six months which may be extended to six years and with fine.”

Respondent No.1 challenged the closure order by filing an appeal under Section 28 of the Water Act read with Section 31 of the Air Act. Similar appeals were preferred by more than four dozen industrial units, which were ordered to be closed on the ground of lack of consent. The Appellate Authority disposed of all the appeals by a common order dated 16.05.2006. The Appellate Authority noted that action had been initiated by the Board in compliance of the direction given by the Supreme Court; that the industries were causing heavy pollution; that the units

were being operated without obtaining requisite consent and concluded that there was no valid ground to interfere with the closure order. Notwithstanding this conclusion, the Appellate Authority allowed respondent No.1 and other similar units to continue to operate for a period of three months. The operative part of the order of the Appellate Authority reads as under:

“ For all the aforesaid reasons, we do not find any merit in the appeals. However, having regard to the fact that these industries have been in operation for a number of years and the Hon’ble Supreme Court also has directed that these industries should be relocated in a phased manner and the State Government also has constituted a task force in this behalf, we feel that the Appellants should be allowed reasonable breathing time so as to enable them to dispose of the stocks on hand and to make arrangements for shifting their industries elsewhere. Accordingly, we suspend the operation of the impugned closure orders for a period of three months from today subject to the condition that the Appellants shall not discharge any effluents or dump any hazardous wastes outside their premises and they shall also effectively operate the pollution control equipments set up by them in their respective units as directed by the A.P. Pollution Control Board. With this modification, the Appeals are dismissed.”

The petitioner has questioned the legality and correctness of the permission granted by the Appellate Authority to respondent No.1 to continue to operate the unit for a period of three months primarily on the ground that in the absence of a valid consent, respondent No.1 cannot be allowed to carry on its operations. Another plea taken by the petitioner is that in the garb of

entertaining the request of respondent No.1 and other units to clear their stocks, the Appellate Authority was not justified in allowing them to operate for a period of three months.

In the counter-affidavit filed by Shri P. Janapu Reddy, Managing Director of respondent No.1, it has not been disputed that the unit is operating without obtaining consent as per the mandate of Sections 25 and 26 of the Water Act and Sections 21 and 22 of the Air Act, but it has been averred that the closure order is only illegal, arbitrary and without justification. According to Shri Reddy, the authorities of the Board have misconstrued the directions given by the Supreme Court and ordered closure of the industry without any tangible reason and without complying with the rules of natural justice.

We have heard learned counsel for the parties and perused the record. It is not in dispute that respondent No.1 has not questioned the legality and correctness of the closure order passed by the Board and its confirmation by the Appellate Authority. Therefore, the closure order will be deemed to have become final. In this backdrop, the only question which requires adjudication by this Court is whether the Appellate Authority could have allowed respondent No.1 to continue its operation for a period of three months.

Learned counsel for respondent No.1 fairly conceded that his client has not questioned the findings and conclusions recorded by the Board and the Appellate Authority in the matter of applicability of the provisions of the Water Act and the Air Act and also that his client has not challenged the closure of the industry

by filing a writ petition for quashing orders passed by the Board and the Appellate Authority, but argued that the innocuous direction given by the latter should not be interfered by the High Court under Article 226 of the constitution. Learned counsel submitted that the Board is not going to suffer any injury, if respondent No.1 is allowed to operate any one of its activities for a period of three months and, therefore, the Court may not interfere with the impugned direction.

We have considered the submission of the learned counsel, but have not felt impressed. In our opinion, without obtaining consent in terms of the provisions contained in Sections 25 and 26 of the Water Act and Sections 21 and 22 of the Air Act, which are mandatory in nature, respondent No.1 could not have established the industry and, in any case, it could not have started manufacturing process. Therefore, the Board did not commit any illegality by ordering closure of the unit. If the Appellate Authority had found any error in the closure order, then it could have annulled the same and allowed the unit of respondent No.1 to continue its operations. However, the fact of the matter is that the Appellate Authority did not find any illegality in the decision of the Board. Rather, it affirmed the closure order by observing that the industrial units should not undertake manufacturing activity without obtaining consent. In this background, the Appellate Authority could not have allowed respondent No.1 to operate for a period of three months. To put it differently, the impugned direction of the Appellate Authority is ultra vires to the provisions of the Water Act as well as the Air Act and, therefore, the same is liable to be quashed.

At this stage, learned counsel for respondent No.1 submitted that the Court may direct the State Government to consider the application, which may be made by his client for allotment of alternative site for setting up the industrial unit. Shri S.V.Bhatt, learned counsel for the petitioner says that he can have no objection if such a request made on behalf of respondent No.1 is accepted. Learned Special Government Pleader appearing for the State says that as and when respondent No.1 makes an application for allotment of alternative site, the same would be considered and decided in accordance with law and the policy, if any, framed by the Government.

In view of the above, we allow the writ petition and quash order dated 16.05.2006 passed by the Appellate Authority insofar as permission has been given to respondent No.1 to operate industry for a period of three months. However, liberty is given to respondent No.1 to make an application to the Board to lift the finished goods. Such application shall be decided by the competent authority of the Board within seven days of its receipt and two months time be given to respondent No.1 to clear the stocks subject to an undertaking being furnished that the industry shall not be operated during that period.

Respondent No.1 is also given liberty to make an application to the State Government for allotment of alternative site. If any such application is filed on behalf of respondent No.1, then the same shall be dealt with and decided by the competent authority as early as possible, but latest within a period of three months. At the same time, we make it clear that this direction

shall not be construed as a mandate of the Court for allotment of site to respondent No.1

de hors the relevant statutory provisions and the policy, if any, framed by the State Government.

It is also made clear that if respondent No.1 or any of its functionaries operate the industry at the present site, the concerned authority of the Board shall have to file a petition for initiation of proceedings under the Contempt of Courts Act, 1971.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

30.06.2006

svs