

WRIT PETITION NO. 2195 OF 2008 (MS)

Versus

State of Uttarakhand and others. ..Respondents.

31st July, 2009

Hon'ble Sudhanshu Dhulia, J.

The petitioners are aggrieved by the order dated 14.12.2008 passed by the SDM Bazpur and the order dated 20.4.2009 passed by the Uttarakhand Environment Conservation and Pollution Control Board, Uttarakhand, whereby the plant or the industrial unit of the petitioners has been stopped from functioning, as it does not have an environmental clearance.

The case of the petitioners is that they have opened a “natural screening plant” in Village Bannakhera, Tehsil Bazpur, District Udham Singh Nagar. According to the petitioners as per the Environment (Protection) Act, 1986 and the rules framed thereunder, there is no provision for the petitioners to get a No Objection Certificate from the Environment Protection Board, which is presently functioning in Uttarakhand, as there is no provision for taking such a certificate for a “natural screening plant” as it is not mentioned in the Schedule, to the Environment Protection Rules.

Admittedly, by a notification of the State of U.P. dated 3rd November, 2000 (contained as Annexure No.4-A to the affidavit filed by respondent no. 4), the entire State

of U.P. has been declared Air Pollution Control Area under Section 19 (1) of the Air Pollution (Prevention and Control) Act, 1981 (From hereinafter referred to as the Act) and therefore, the net effect of the notification would be that the prior approval of the Board would be necessary before opening any plant or industry which is described in the Schedule given in the Environment (Protection) Rules, 1986, which have been framed under the Act. What has to be seen is whether the plant or the industry of the petitioners is such as to necessarily require a clearance from the Pollution Control Board. This can only be verified after examining whether such an industry is notified in the Schedule or not. In case it is notified a clearance would be mandatory, otherwise not. What has, however, be seen is the broad nature of the industry and not the precise nomenclature, stated in the schedule.

According to the petitioners, in the schedule to the Environment (Protection) Rules, 1986 (**from hereinafter referred to as the Rules**), there is no mention of “natural screening plant”, but what it does mention is a “stone crushing unit”. According to the petitioners, “natural screening plant” is not a “stone crushing unit” and therefore a No Objection Certificate is not required. This argument of the petitioners is not entirely satisfactory. The requirement of a “No Objection Certificate” is that before it is given the concerned factory adopts certain measures including preventive measures in the factory premises in order to reduce or minimise the air and water pollution. In order to mitigate some hazards, certain preventive measures have been given in the Schedule I of the Rules and only if the unit adopts these preventive measures, the No Objection Certificate

or clearance can be granted. However, the petitioner reiterates that the schedule does not mention “the natural screening plant”. The fact of the matter is that the plant of the petitioners is a “natural screening plant”, which carries out the process of screening, separating and grading of river bed material into sand, gravel, pebbles and stones of various sizes. This entire process of separation results in stone particles being suspended in the air, which causes pollution. It is for this reason that a unit such a “stone crushing unit”, which by and large does a similar work and finds mention at Serial No. 11 in Schedule (I) of the Environment (Protection) Rules, 1986, there is a requirement for mitigating or checking the pollution so caused to the air. What is of significance is the removal of suspended dust particles from the air so that the pollution may be minimized. Undoubtedly, in a process presently undertaken by the petitioners, there is a pollution of the air and therefore, it is necessary that the petitioners must adopt the preventive measures such as (i) Dust Containment cum suppression system of the equipment, (ii) Construction of wind breaking walls, (iii) construction of the metalled roads within the premises, (iv) regular cleaning and wetting of the grounds within the premises, (v) growing of a green belt along the periphery and other preventive measures as provided in the schedule. Relevant Schedule I (sl. No. 11 &. 37) of the Environment (Protection) Rules, 1986 reads as follows:

Stone crushing unit	Suspended particulate matter	The suspended particulate matter measured between 3 metres and 10 metres from any process equipment of a stone-crushing unit shall not exceed
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Stone crushing unit	Suspended Particulate Matter (SPM)	The standards consists of two parts:	<p>600 micro-grammes per cube metre.]</p> <p>(i) Implementation of the following pollution control measures:</p> <p>(a) Dust containment cu suppression system of the equipment.</p> <p>(b) Construction of wind breaking walls.</p> <p>(c) Construction of the metalled roads within the premises.</p> <p>(d) Regular cleaning and wetting of the ground within the premises.</p> <p>(e) Growing of a green belt along the periphery.</p> <p>(ii) Quantitative standard for the SPM:</p> <p>The suspended Particulate Matter contribution value at a distance of 40 metres from a controlled isolated as well as from a unit located in a cluster should be less than 600 mg/Nm. The measurements are to be conducted at least twice a month for all the 12 months in a year.</p>
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In view of the aforesaid, what has to be seen by this Court is the actual nature of the work being conducted by the petitioners and not the nomenclature of

its unit. What matters is the deed one does and not the name. It is not necessary that the actual nomenclature of the plant may fall within a given heading in the schedule. Broadly, the nature of the work being conducted in the petitioners' premises is similar to the work being done in a "stone crushing unit", as far as pollution of the air is concerned. Therefore, in considered view of this Court, the petitioners have to take "No Objection Certificate", which can only be taken by adopting preventive measures as envisaged in the Schedule of the Rule. Since, the petitioners have not taken the No Objection Certificate, the plant of the petitioners has rightly been stopped. There is no anomaly in the order dated 14.12.2008 passed by the S.D.M. Bazpur as well as order dated 20.4.2009 passed by the respondent no. 4. The writ petition is therefore liable to be dismissed and is hereby dismissed.

However, it is open to the petitioners to approach the Pollution Control Board and adopt all measures as envisaged under the Act, particularly in schedule (I) as has been mentioned in the body of the present order, the Pollution Control Board thereafter shall consider the grant of no objection certificate / consent to the petitioners. In case the petitioners approach the Pollution Control Board and adopt the measures as envisaged under the Act, the Board shall consider the case of the petitioners for granting no objection certificate / consent as expeditiously as possible as per law after inspecting the premises of the petitioners.

(Sudhanshu Dhulia, J.)
31.7.2009