

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.421 of 2017**

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M/s Ramco Industries Ltd., having registered office at 47, P.S.K. Nagar, Rajapalayam, Tamil Nadu 626108, through its Works Manager Sri Pankaj Kumar, Son of Sri Madan Prasad Verma, Plot No. A/1, BIADA Industrial Area, Bihiya, District Bhojpur, Bihar 802152

.... .... Petitioner

Versus

1. The Bihar State Pollution Control Board, through its Chairman, Beltron Pariwesh Bhawan, NSB - 02, Patliputra Industrial Area, Patna 800010, Bihar
2. The Chairman, Bihar State Pollution Control Board, Pariwesh Bhawan, NSB - 02, Patliputra Industrial Area, Patna 80010 Bihar
3. The Member Secretary, , Bihar State Pollution Control Board, Pariwesh Bhawan, NSB - 02, Patliputra Industrial Area, Patna 80010 Bihar

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Y.V.Giri, Sr.Adv.  
Mr. Ashish Giri, Adv.

For the Respondent/s : Mr. Shivendra Kishore, Sr.Adv.  
Ms. Binita Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**CAV JUDGMENT**

**Date: 30-03-2017**

The petitioner by this writ petition prays for issuance of a writ in the nature of certiorari for quashing the order bearing Memo No. T-8625 dated 8.12.2016 passed by the Chairman, Bihar State Pollution Control Board, Patna in purported exercise of power vested under section 31A of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'the Air Act'), whereby the orders have been issued for closure of the industrial plant of the petitioner with immediate effect with threat of legal action under section 37 of the said Act. A copy of the order is impugned at Annexure 11 to the



writ petition. The petitioner alongside also prays for a writ in the nature of mandamus commanding the respondents to permit the petitioner to operate the industrial plant.

Mr. Y.V.Giri, learned Senior Counsel, has appeared for the petitioner alongwith Mr. Ashish Giri, to submit that it is pursuant to grant of consent to establish issued by the Bihar State Pollution Control Board under the provisions of Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Water Act') and the provisions of Section 21 of 'the Air Act' granted by the Bihar State Pollution Control Board, Bihar, Patna (hereinafter referred to as 'the Board') bearing Memo No. 10727 dated 5.10.2010 and the Environmental Clearance granted by the Government of India in its Ministry of Environment and Forests, as contained in their letter dated 17.1.2011, present at Annexure 2, that the unit of the petitioner was established at Bihiya in the district of Bhojpur in the year 2011 for manufacture of White Chrysotile Asbestos Fiber Cement Sheet and its accessories. According to the learned Senior Counsel, the consent orders issued under the two enactments were renewed from time to time and lastly for a period ending 31.3.2016, as contained in Annexures 3 series and 4 series. It is submitted that it is when the petitioner applied for renewal of the consent orders on 12.2.2016 for the period commencing 1.4.2016, that



the petitioner was served with a show cause notice dated 8.4.2016 issued under section 21(4) of 'the Air Act' and Sections 25 and 26 of 'the Water Act' putting the petitioner on notice on five counts mentioned in the show cause notice and requiring response from the petitioner as to why the consent application be not refused. An exhaustive reply was filed by the petitioner together with the necessary enclosures, a copy of which is present at Annxures 7 series, but by the order passed on 11.5.2016 the explanation given by the petitioner was rejected by the Chairman of the Board who while reiterating the allegations has rejected the applications filed by the petitioner for grant of renewal of emission consent order and discharge consent order filed on 12.2.2016.

It is the submission of Mr. Giri that being aggrieved by the order dated 11.5.2016 of the Chairman, the petitioner has filed statutory appeal before the appellate authority giving rise to Appeal Case No. 28/2016, a copy of which is present at Annexure 9 and which has been admitted by the appellate authority, which consists of the Chairman cum Member, Board of Revenue, the Principal Secretary of the Industries Department and the Principal Secretary of Environment and Forest Department, vide order passed on 25.7.2016. A copy of the order sheet is enclosed at Annexure 10.

It is the submission of Mr. Giri that the appellate authority



after taking note of the prayer of the petitioner for interim stay of the order of the Chairman of the Board whereby, the application for grant of renewal was refused, adjourned the matter to 12.8.2016 as manifest from the order sheet placed at Annexure 10. Learned Senior Counsel has referred to the date chart annexed at Annexure 10A to submit that since thereafter the matter has been taken up on four dates i.e. 12.8.2016, 26.8.2016, 16.9.2016 and 17.10.2016 but neither any order was passed on the stay application nor any final order has been passed on the appeal and the matter remains pending. He submits that while the matter is pending consideration before the appellate authority which consists of three members including Mr. Vivek Kumar Singh, Principal Secretary, Environment and Forest Department, that the Chairman of the Board has been replaced and Mr. Vivek Kumar Singh, Principal Secretary, Department of Environment of Forest, has also been appointed as the Chairman of the Board.

It is submitted that while on one hand the matter remains pending before the appellate authority to test the correctness of refusal to grant consent order, of which Mr. Vivek Kumar Singh is also a Member and on the other hand, as the Chairman of the Board, he has proceeded to pass an order for closure of industrial plant with immediate effect in purported exercise of power vested under section 31A of 'the Air Act' and one of the grounds assigned for such order is,



that no relief has been granted by the appellate authority on the appeal filed by the petitioner. He submits that in such peculiar circumstances where the one of members of the appellate authority, also occupies the post of the Chairman of the Board, and would now be sitting as an appellate authority over his own orders, that the petitioner is before this Court.

The submissions advanced by Mr. Giri to question the order of closure passed under section 31A of 'the Air Act' is that it is wholly without jurisdiction as the Chairman has not been vested with the powers of the Board. It is submitted that the order dated 8.12.2016 passed by the Chairman under section 31A of 'the Air Act', impugned at Annexure 11, is also in violation of the principles of natural justice as neither any notice nor an opportunity of hearing was granted to the petitioner before the order was passed. It is submitted that the law is well settled and any order visiting a person with civil consequences requires compliance with the rules of natural justice.

Mr. Giri, learned Senior Counsel appearing for the petitioner, next submits that in view of closure order passed by Mr. Vivek Kumar Singh in capacity of the Chairman of the Board, impugned at Annexure 11, the appeal pending before the appellate authority, of which he is also a Member, in capacity of the Principal Secretary, Environment and Forest Department, has become empty



formality and a futile exercise. He submits that Mr. Vivek Kumar Singh having sat as an appellate authority over the order passed by the predecessor in the office of the Chairman, he could not have exercised the powers of the Chairman to order for closure of the establishment of the petitioner. He submits that this single aspect of the matter vitiates the entire decision making process.

Learned Senior Counsel in support of his submissions has relied upon the following judgments:

- (i) 2016(1) PLJR (SC) 27; Paragraphs 14 and 15 (**Brij Bihari Singh v. the Bihar State Financial Corporation & ors.**)
- (ii) (2012)2 SCC 108; Paragraphs 81 and 82 (**Executive Engineer, Southern Electricity Supply Company of Orissa Ltd. v. Sri Seetaram Rice Mill**)
- (iii) (1969)2 SCC 262; Paragraph 15 (**A.K.Kraipak & ors. v. Union of India & ors.**)

It is the argument of Mr. Giri that the order of refusal to renew the consent order as well as the order of closure impugned herein, both are based on an inspection report, a copy of which is enclosed by the respondents at Annexure 'R/A' at running page 156 of the proceedings. According to Mr. Giri, this inspection report itself is inadmissible as it is contrary to the mandatory requirements present in



section 26 of 'the Air Act'. It is submitted that since the orders put to question before the appellate authority as well as the order of closure impugned herein are resting on an illegal inspection report, the moment the foundation for the two orders is removed, the super structure built thereon cannot survive. He submits that neither any prior notice was given to the petitioner prior to inspection nor the samples collected bears the signature of the representative of the petitioner nor a copy of the same was provided to him. It is submitted that the order of refusal to renew consent present at Annexure 8 as well as the order of closure passed under section 31A of 'the Air Act' are non-speaking orders and have been mechanically passed. Learned Senior Counsel in reference to the judgment of the Supreme Court reported in (2010)13 SCC 427 (**Oryx Fisheries Pvt. Ltd. v. Union of India & ors.**), Paragraphs 36 and 40, submits that despite the law being settled on the duty cast on a quasi judicial authority, to assign reasons, the opinion has been ignored.

Learned Senior counsel in reference to the show cause filed before the Chairman against the proposed refusal for consent to operate, present at Annexures 7 series, as well as the minutes of the Expert Committee of the Ministry of Environment, Govt. of India, present at Annexures 5 and 5A, submits that even on merits the orders are unsustainable and the specific stand taken by the petitioner has not



been considered. It is the submission of the learned Senior Counsel that since both the orders are resting on an illegal inspection report and have been passed in a mechanical fashion, they are both rendered illegal and are fit to be quashed. Learned Senior Counsel in support of the said submission refers to a judgment of the Supreme Court reported in (2010)5 SCC 791 (**Mysore Urban Development Authority vs. Veer Kumar Jain & ors.**).

It is the argument of learned Senior Counsel appearing for the petitioner that even if the appeal for quashing the refusal to grant consent order is pending before the appellate authority, but in the circumstances noticed where Mr. Vivek Kumar Singh, the Chairman of the Board, is also discharging the role of an appellate authority, the hearing in the appeal matter stands prejudiced and this Court can well mould the relief prayed in the writ petition in view of the peculiar circumstances existing. Learned Senior Counsel in support has referred to a Bench decision of this Court reported in 2015(1) PLJR 639, Paragraphs 25 to 27, (**Manoj Kumar Singh vs. the State of Bihar & ors.**).

The argument of Mr. Giri has been contested by Mr. Shivendra Kishore, learned Senior Counsel representing the respondents, who appears alongwith Ms. Binita Singh. While raising objections as to the maintainability of the writ petition, he submits in





reference to the provisions underlying Section 31 of 'the Air Act' that any order passed under the said Act is appealable before the appellate authority under section 31. He submits that the petitioner without exhausting the appellate remedy so available to it, has approached this Court directly and thus, the writ is not maintainable.

Responding to the issue of jurisdiction raised by Mr. Giri to question the order of closure under section 31A of 'the Act', impugned at Annexure 11, learned Senior Counsel appearing for the Board has referred to the provisions underlying Section 15 of 'the Act' to submit that the Act itself empowers the State Board to delegate its power on the Chairman or Member Secretary or any other Officer of the Board, subject to such conditions and limitations as may be specified by a general or special order. Learned Senior Counsel next has referred to the supplementary counter affidavit filed in the present proceedings and with reference to the notification at Annexure 'R/C' and 'R/D' thereof submits that vide Agenda No.7 of the Resolution, the Board has in its meeting held on 12.1.2002 approved the proposal to delegate its power vested under section 33A of 'the Water Act' and Section 31 of 'the Air Act' on the Chairman. He thus submits that there is no infirmity in exercise of jurisdiction by the Chairman of the Board under section 31A of 'the Air Act'. Learned Senior Counsel has also raised objections on non-joinder of parties as according to Mr.



Shivendra Kishore, learned Senior Counsel, the State would be a necessary party in the present proceedings.

Adverting himself to the merits of the contest, it is the argument of Mr. Shivendra Kishore, learned Senior Counsel for the Board that Annexure 11 is a mere consequence of the refusal of consent order passed by the Chairman vide Annexure 8 and which is pending consideration before the appellate authority. It is argued that even in absence of the order of closure passed by the Chairman under section 31A of 'the Air Act', the petitioner could not have operated its unit in absence of a consent order. Learned Senior Counsel while admitting that the inspection report has not been supplied to the petitioner, refers to the show cause notice present at Annexure 6 to submit that the substance of the inspection report stands reproduced in the show cause notice dated 8.4.2016 and the petitioner was put to notice on five counts. It is, thus, argued that since the entire matter is pending consideration before the appellate authority and Annexure 11 is only a consequential action taken by the Chairman, there is no merit in the contest raised herein.

Learned Senior Counsel responding to the argument of Mr. Giri that the order of closure passed by the Chairman in purported exercise of powers vested under section 31A of 'the Air Act' is in violation of the principles of natural justice since no notice nor



hearing was given to the petitioner, he submits that there is no obligation cast upon the Chairman to give a hearing to the party concerned because there is no such stipulation provided in the statutory provisions. According to Mr. Kishore, learned Senior Counsel, since an order passed by the Board under section 31A of 'the Air Act' is a mere consequence of an order of refusal to grant consent, passed under section 21(4) of 'the Air Act' and the power vested in the Board to issue directions under section 31A of 'the Air Act' does not provide for an opportunity of hearing, there is no statutory violation.

Learned Senior Counsel has next referred to the National Green Tribunal Act, 2010 (hereinafter referred to as 'the NGT Act') to submit that the powers exercised under the enactments in consideration, are under the regulatory control of the National Green Tribunal and any order passed by the appellate authority is appealable before the National Green Tribunal. Learned Senior Counsel has referred to a judgment of the Supreme Court reported in (2012)8 SCC 326 (**Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India & ors.**) and with particular reference to paragraphs 40 and 41 of the judgment he has submitted that the Supreme Court has clarified that in order to avoid conflicting decisions in environmental pollution matters, the issues concerning pollution should be allowed to be adjudicated by the National Green Tribunal. According to the learned



Senior Counsel, since there is a special forum provided for consideration of the issues concerning environmental pollution, the petitioner may be accordingly asked to exhaust the statutory remedy so available to it. Reiterating the legal position, he submits that the order impugned at Annexure 11 is appealable under section 31 of 'the Air Act' before the appellate authority and the petitioner should have exhausted the said remedy instead of approaching this Court in its writ jurisdiction.

With reference to Section 21 of 'the Air Act' and Section 25 of 'the Water Act', he submits that certain restrictions have been imposed on the use of industrial plants which are subject to grant of consent orders by the Board. He submits that Section 21(4) of 'the Air Act' and Section 25(4) of 'the Water Act' empowers the State Board to pass appropriate orders for grant of consent or for cancellation thereof. According to the learned Senior Counsel, since the petitioner was found wanting on a number of issues and the explanation given by the petitioner did not satisfy the Chairman, that the consent was refused within four months of filing of the application by the petitioner seeking renewal, vide order placed at Annexure 8. According to the learned Senior Counsel, in the circumstances where the contest on the issue of renewal of consent, is yet to be finally adjudicated by the appellate authority and since any order passed by



the appellate authority is appealable before the National Green Tribunal, this Court may not express any opinion on the merits of the contest.

Mr. Giri, learned Senior Counsel appearing for the petitioner, in his short rejoinder has submitted that the appeal has lost its meaning in the peculiar circumstances existing where the Principal Secretary, Forest and Environment Department, is not only discharging the duties of the Chairman of the Board but is also sitting as an appellate body over the orders so passed. He submits that in the peculiar circumstances emanating in the present case where the violation of principles of natural justice is reflecting from the events itself, inasmuch as neither the order of refusal of consent takes into consideration the issues raised by the petitioner in his reply against the show cause present at Annexure 6 nor does it takes into consideration the apparent violation of Sections 26 and 27 of 'the Air Act' by the respondents and on the other hand, the order of closure impugned in the present writ petition passed under section 31A of 'the Act' is without show cause and without an opportunity of hearing, the action complained, is unsustainable.

Learned counsel rebutting the argument of Mr. Kishore regarding absence of statutory obligation on the board to give opportunity of hearing before passing any order under section 31A of



'the Air Act', has referred to Rule 34 of the Rules framed under 'the Water Act' to submit that a right of hearing is statutory.

Learned Senior Counsel concluding his arguments has submitted that this Court in the circumstances existing, may mould the relief prayed by the petitioner since the pending appeal has become academic.

I have heard learned counsel for the parties and have perused the records.

The order passed by the Chairman Mr. Vivek Kumar Singh under section 31A of 'the Air Act' in purported exercise of power vested in the Board under section 31 of 'the Air Act' has been questioned by the petitioner on grounds of absence of jurisdiction, judicial bias, violation of the principles of natural justice and on grounds that by this order the appellate remedy to the petitioner stands prejudiced.

There is no dispute on facts. The petitioner's unit was established in the year 2011 and with due permission granted by the Central Government in its Ministry of Environment and Forest as well as on permission granted by the State Pollution Control Board. There is no dispute on this stand of the petitioner. It is also not in dispute that preceding the order refusing grant of consent under 'the Air Act' and 'the Water Act', there are no complaints as to the adherence of the



statutory prescriptions by the petitioner under either of the two enactments as reflected from the records of the proceedings. The problems for the petitioner has arisen by submission of the inspection report, a copy of which has been placed on record vide Annexure 'R/A' to the counter affidavit of the respondents. The report mentions the date of inspection as 6.4.2016 even when renewal of the consent order is to take place with effect from 1.4.2016 and the reasons are not given. It is also not explained as to why, when the petitioner submitted his application for renewal of the consent order on 12.2.2016 for the period commencing 1.4.2016 and even if the provisions underlying section 21(4) of 'the Air Act' and section 25(4) of 'the Water Act' gives liberty to the respondent Board to take a decision in this regard within four months of filing of such application but this liberty is circumscribed by the 1st proviso attached to section 21(4) of 'the Air Act' and the 2nd proviso thereto casts an obligation on the State Board to give a reasonable opportunity of hearing to the person concerned. On the other hand, while section 25 of 'the Water Act' relates to restrictions on new outlet and new discharges for the purpose of grant of consent orders by the State Board, sub-section (6) deals with situation where a consent order has been earlier granted and provides that unless consent so applied for in sub-section 25(1) is given or refused earlier, it shall be deemed to have been given



unconditionally on expiry of four months period of filing of such application. The power to refuse or withdraw the consent is vested in the Board under section 27 of 'the Water Act' and not section 25(4) of 'the Water Act' as relied upon by Mr. Shivendra Kishore, learned Senior Counsel for the Board. The Act also vests power in the State Board to review its renewal of consent order from time to time subject to variation or revocation of any condition. The foundation for such refusal or to issue a consent order by the State Board rests on an inspection to be carried out in the manner prescribed under sections 26 and 27 of 'the Air Act' and sections 21 and 22 of 'the Water Act'. Each of the two provisions casts an obligation on the State Board to carry out such enquiry with due notice and in presence of the occupier or his agent, for the purpose of collection of sample.

It is the contention of the petitioners and not contested that the statutory obligation cast under section 26 and 27 of 'the Air Act' and sections 21 and 22 of 'the Water Act' has not been discharged by the authorities of the Board. It is also undisputed that the copy of the enquiry report was not handed over to the petitioner although they were duly heard and whereafter the order dated 11.5.2016 has been passed by the then Chairman of the Board refusing to renew emission consent order and discharge consent order beyond 31.3.2016. The order of refusal of consent is annexed at Annexure 8 to the writ





petition and is subject matter of appeal in Case No. 28/2016 before the Board of Revenue, the order sheet of which is placed at Annexure 10 to the writ petition. The appellate body consists of Mr. S. Sidharth, Principal Secretary, Industries Department, Mr. Vivek Kumar Singh, Principal Secretary, Environment and Forest Department and Mr. Anand Bardhan Sinha, Chairman cum Member, Revenue Board. As per the petitioner, the appeal has been heard on 27.6.2016, 5.7.2016, 28.7.2016 and thereafter on 25.7.2016 when the appellate authority was pleased to admit the appeal. The petitioner, who is appellant before the Board, prayed for interim relief and the matter was adjourned and thereafter has been taken up on 12.8.2016, 28.8.2016, 16.9.2016 and 17.10.2016 but no order was passed on the prayer for interim relief prayed by the petitioner and while the appeal remains pending one of the appellate body Members Mr. Vivek Kumar Singh has been given the additional charge of the Chairman of the State Pollution Control Board and who by the impugned order dated 8.12.2016 issued directions under section 31A of 'the Air Act' directing closure of industrial plant with immediate effect, which is impugned at Annexure 11.

I shall be dealing with the issues raised and contested by the parties as taken note of hereinabove one by one. Before I would proceed to express my opinion on the issues raised and contested by



the parties I would make it clear that since a statutory appeal against the order refusing consent is pending before the appellate authority under section 31 of 'the Air Act', I would not be making any comment as regarding inter se merits of refusal to grant consent order. Rather the discussions hereinabove and my opinion hereinafter is exclusively on the legality and sustainability of the order put to challenge in this writ petition passed under section 31A of 'the Air Act' by the Chairman of the Board as its delegate and impugned at Annexure 11.

Re: **Jurisdiction**

Section 31A of 'the Air Act' vests jurisdiction in a State Board with power to issue directions which includes the power of directing closure of any industry. The power to issue any such direction under section 31A of 'the Air Act' vested in the State Board, is appealable before the appellate authority under section 31 of 'the Air Act'. Section 31B of 'the Air Act' makes the order passed by the appellate authority appealable before the National Green Tribunal constituted under the 'N.G.T.Act'. It is a matter of record and not contested that Mr. Vivek Kumar Singh, who has passed the order under section 31A of 'the Air Act' in the capacity of the Chairman and as a delegate of the Board, is also a member of the appellate authority. In other words, the order passed by Mr. Vivek Kumar Singh is appealable before a Body of which Mr. Vivek Kumar Singh is also a



Member. Obviously, Sri Singh cannot sit in appeal over his own order. In other words until such time that the State Government would take appropriate measures for reconstitution of the Board or the appellate authority, to hear appeals under section 31 of 'the Air Act', there is no forum available for the persons aggrieved to question any order passed by the Chairman as the delegate of the State Board, under the enactments in consideration and it is faced with such situation that the petitioner has rightly moved this Court in its extraordinary writ jurisdiction.

As regarding issue of jurisdiction exercised by the Chairman as the delegate of the Board for issuing directions under section 31A of 'the Air Act', Mr. Shivendra Kishore has relied upon section 15 of 'the Air Act' and section 11A of 'the Water Act' to submit that a State Board may by general or special order delegate to the Chairman or the Member Secretary or any other Officer of the Board to discharge its powers and functions under 'the Air Act' as deem necessary, subject to the conditions and limitations. The power to delegate as found in section 15 of 'the Air Act' and section 11A of 'the Water Act' is statutory but it would have to be tested in context with the notification relied upon by Mr. Shivendra Kishore, a copy of which has been enclosed as Annexure 'R/C' to the supplementary counter affidavit, which is a proceeding of 7th Board's meeting held on 19.8.2002.



Mr. Kishore, learned Senior Counsel representing the Board, has referred to Agenda No.7 to submit that the Board vide resolution contained therein, has delegated powers vested in the State Board under section 33A of 'the Water Act' and section 31A of 'the Air Act' in the Chairman of the Board.

In my opinion, the resolution is faulty and confers no jurisdiction in the Chairman to exercise powers of the State Board under section 31A of 'the Air Act'. As can be demonstrably seen from Annexure 'R/C', that Agenda No.7 relates to delegation of power under section 11A of 'the Water Act' to the Chairman. Undisputedly a delegation of power under 'the Water Act' cannot be construed a delegation under 'the Air Act'. The resolution, thus, passed by the State Board in delegating its power on the Chairman, even if valid in so far as powers under section 33A of 'the Water Act' is concerned, but it cannot be construed a delegation of powers under section 31A of 'the Air Act' which has to be done in exercise of similar powers vested in the State Board under section 15 of 'the Air Act' and which is missing in the present case.

The discussions above confirms that the Chairman while passing the order dated 8.12.2016 in purported exercise of power vested in the Board under section 31A of 'the Air Act', has exceeded its jurisdiction because the resolution relied upon by the respondents



present at Annexure 'R/C' is neither a resolution under section 15 of 'the Air Act' nor a delegation under section 11A of 'the Water Act' can be extended to read and understand a delegation under section 15 of 'the Air Act'. In other words, there is no delegation under section 15 of 'the Air Act' in the Chairman to exercise powers vested in the State Board under section 31A of 'the Air Act'. The issue raised by Mr. Giri, learned Senior Counsel, questioning the jurisdiction of the Chairman to exercise powers of the State Board under section 31A of 'the Air Act' is thus upheld.

**Re: Alternative Remedy:**

Apart from the fact that until such time Sri Vivek Kumar Singh is assigned the twin responsibility of the Chairman of the Board as well as its appellate body, the appeal remedy under the enactments in question is neither available to the writ petitioner or any other person in the peculiar circumstances discussed above, even otherwise, an existence of an alternative remedy is not an absolute bar for invoking the extraordinary writ jurisdiction of this Court. Reference is made to a Constitution Bench judgment of the Supreme Court reported in AIR 1958 SC 86 (**State of U.P. v. Mohammad Nooh**). The matter related to disciplinary proceedings in which the Presiding Officer had offered himself as a witness in the proceeding. The Supreme Court while considering the issue of availability of



alternative remedy has the following words of advice in paragraphs 10 and 11 of the judgment:

"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior Court in arriving at a conclusion as to whether it should, in exercise of its discretion issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. In the *King v. Postmaster-General; Ex parte Carmichael*, 1928-1 KB 291 (E), a certiorari was issued although the aggrieved party had an alternative remedy by way of appeal. It has been held that the superior Court will readily issue a certiorari in a case where there has been a denial of natural justice before a Court of summary jurisdiction. The case of *Rex v. Wandsworth Justices; Ex Parte Read*, 1942-1 KB 281 (F) is an authority in point. In that case a man had been convicted in a court of summary jurisdiction without giving him an opportunity of being heard. It was held that his remedy was not by a case stated or by an appeal before the quarter sessions but by application to the High Court for an order of certiorari to remove and quash the conviction. At p. 284 Viscount Caldecote, C. J., observed :

"It remains to consider the argument that the remedy of certiorari is not open to the applicant because others were available. It would be ludicrous in such a case as the present for the convicted person to ask for a case to be stated. It would mean asking this Court to consider as a question of law whether justices were right in convicting a man without hearing his evidence. That is so extravagant an argument as not to merit a moment's consideration. As to the right of appeal to quarter sessions, it may be that the applicant could have had his remedy if he had pursued that course, but I am not aware of any reason why, if in such circumstances as these, he preferred to apply for an order of certiorari to quash his conviction, the Court should be debarred from granting his application."

Likewise in *Khurshed Modi v. Rent Controller, Bombay*, AIR 1947



Bom 46 (G), it was held that the High Court would not refuse to issue a writ of certiorari merely because there was a right of appeal. It was recognized that ordinarily the High Court would require the petitioner to have recourse to his ordinary remedies but if it found that there had been a breach of fundamental principles of justice, the High Court would certainly not hesitate to issue the writ of certiorari. To the same effect are the following observations of Harries, C. J., in 56 Cal WN 453 : (AIR 1952 Cal 656) (D) at p. 470 (of Cal WN) : (at p. 665 of AIR) :

"There can, I think, be no doubt that Court can refuse to issue a certiorari if the petitioner has other remedies equally convenient and effective. But it appears to me that there can be cases where the Court can and should issue a certiorari even where such alternative remedies are available. Where a Court or tribunal, which is called upon to exercise judicial or quasi-judicial functions discards all rules of natural justice and arrives at a decisions contrary to all accepted principles of justice then it appears to me that the Court can and must interfere."

It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari. (See Corpus Juris Secundum Vol. 14 Art. 40 p. 189). If, therefore, the existence of other adequate legal remedies is not per se a bar to the issue of certiorari and if in a proper case it may be the duty of the superior Court to issue a writ of certiorari to correct the errors of an inferior Court or tribunal called upon to exercise judicial or quasi-judicial functions and not to relegate the petitioner to other legal remedies available to him and if the superior Court can in a proper case exercise its jurisdiction in favour of a petitioner who has allowed the time to appeal to expire or has not perfected his appeal e.g., by furnishing security required by the statute, should it then be laid down as an inflexible rule of law that the superior Court must deny the writ when an inferior Court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior Court or tribunal on appeal or revision? The case of 1889-22 QBD 345 (C) referred to in 1951 SCR 344 : (AIR 1951 SC 217) (B) furnishes the answer. There the manager of a club was convicted under a certain statute for selling beer by retail without an excise retail license. Subsequently he was convicted of selling intoxicating liquor, namely, beer without a license under another statute. Upon hearing of the later charge the Magistrate treated it as a second offence and imposed a full penalty authorised in the case of a second offence by the latter statute. His appeal to the quarter sessions having been dismissed, he applied for a writ of habeas corpus and it was granted by the King's Bench Division on the ground that the Magistrate could not treat the later offence as a second offence, because it was not a second offence under the Act under which he was convicted for the second time. Evidently the



point was taken that if there had been any error, irregularity or illegality committed by the Magistrate, the quarter sessions could have on appeal corrected the same and that the quarter sessions having dismissed the appeal the Court of Queen's Bench Division could not issue the writ of habeas corpus. This was repelled by the following observations of Hawkins, J. :

"This is true as a fact, but it puts the prosecution in no better position, for if the Magistrate had no power to give himself jurisdiction by finding that there had been a first offence where there had been none, the justices could not give it to him."

11. On the authorities referred to above it appears to us that there may conceivably be cases - and the instant case is in point - where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice, which cannot be obliterated or cured on appeal or revision. If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what a ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior Court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that."

The judgment rendered by the Supreme Court in the case of **Whirlpool Corporation** since reported in (1998)8 SCC page 1 also confirms the position at paragraphs 14 to 20 when the Supreme Court confirms that the jurisdiction of the High Court to entertain a petition under Article 226 of the Constitution is not affected by mere availability of alternative remedy, specially where the authority





against whom the writ petition is filed is shown to have no jurisdiction or had purported to usurp the jurisdiction without any legal foundation.

Re: **Violation of principles of natural justice**

It is not in dispute rather it is an admitted position that the order put to challenge in this writ petition was passed without any notice and without any opportunity of hearing to the petitioner. Mr. Shivendra Kishore, learned Senior Counsel, while trying to advocate that the order passed by the Chairman under section 31A of 'the Air Act' is a routine action and a mere consequence of an order of rejection of consent, has somewhere left forgotten that the order is extreme in nature and visits the petitioner with severe penal consequences of extreme nature. It is rather surprising that even when the Chairman exercising powers of the Board intends to order for closure of operations in the establishment, he has not bothered to even put the petitioner on notice. What is even more worse is the fact that the Chairman has himself taken note of the pending proceedings before the appellate authority of which he himself is a Member and even though the prayer of the petitioner for interim relief has been adjourned by the appellate authority from one date to another, yet the alleged failure of the petitioner to obtain interim protection has been cited as one of the grounds for the order of closure. In other words,



the failure of the appellate authority of which, the Chairman happens to be a Member, to pass appropriate order on the prayer for stay made by the petitioner, has gone against the petitioner and a default by the appellate authority is assigned as one of the grounds to order for closure.

It is absolute absurdity to attribute laches on the petitioner to obtain an interim order from the appellate authority even when the petitioner has made such prayer as back as on 25.7.2016 and the matter was posted for the purpose on subsequent dates on which the matter was taken up but no order was passed by the appellate authority. The concept of adherence to the principles of natural justice has been subject matter of plethora of judgments and even though the right to notice coupled with the right of being heard has been upheld as an essential prerequisite to such adherence, yet the executive authorities discharging quasi judicial functions remain oblivious.

I am tempted in this regard, to refer to a judgment of the Supreme Court reported in (1981)1 SCC 664 (**Swadeshi Cotton Mills & ors. v. Union of India**). A similar provision under the Industries (Development and Regulation) Act, 1951 came up for consideration before the Supreme Court. The Court taking note of judicial pronouncement rendered on the issue over years, in the case of **Ridge v. Baldwin**, reported in (1963)2 All ER 66 (HL), **State of Orissa v.**



**Dr. Bina Pani Dei**, reported in AIR 1967 SC 1269, **A.K.Kraipak v. Union of India** (supra), **Mohinder Singh Gill v. Election Commissioner of India**, reported in (1978) 1 SCC 405, **Maneka Gandhi v. Union of India**, reported in (1978)1 SCC 248, has held that even if the Statute conferring power is silent with regard to giving a pre-decisional hearing to the person affected and the action taken involves civil consequences of grave nature, yet a minimum hearing has to be afforded to the person concerned. The obligation cast on bodies discharging statutory function of quasi judicial nature in ensuring compliance to the principles of natural justice has taken a shape of essential requirement and a right to notice coupled with right of hearing is the order of the day except where circumstances are exceptional and warranting immediate action. Such is not the case here. The appeal is pending and the Chairman is well aware of it. It is also not a case where the petitioner has been found wanting in ensuring compliance of the provisions of the enactments in question and if what transpires from the affidavit(s) filed by the parties in the present proceedings is true, then the action taken is the first, since the industrial unit was established in the year 2011.

Even if the provisions underlying section 31A of 'the Air Act', does not in so many words spell out the requirement of a notice and a right to hearing to the person concerned but considering the



effect of an order passed under the said provisions, in my opinion, a notice and a hearing is a sine qua non to such action. In the undisputed circumstances discussed, where the order impugned in the writ petition has been passed by the Chairman exercising power of the Board, without notice and opportunity of hearing to the petitioner, it violates the basic tenets underling the principles of natural justice for an order containing directions of such extreme nature, necessarily and essentially requires the person concerned to be put on notice with an opportunity to represent. The procedure not having been followed, the order is unsustainable.

**Re: Judicial Bias:**

In the undisputed circumstances existing where the Chairman, Sri Vivek Kumar Singh exercising the power of the Board, also happens to be the Member of the appellate authority constituted under section 31 of 'the Air Act', not only the right to appeal vested in the petitioner stands forfeited, even otherwise Sri Singh cannot sit in appeal over his own orders or the orders passed by his predecessor in Office until he continues to discharge the functions of the Chairman of the Board.

The opinion expressed by this Court hereinabove are sufficient reasons to hold that the order dated 8.12.2016 passed by the Chairman, Bihar State Pollution Control Board in exercise of powers



vested in the State Board under section 31A of 'the Air Act' is illegal, an order passed without jurisdiction and also passed in violation of the principles of natural justice. In consequence the order dated 8.12.2016 passed by the Chairman impugned at Annexure 11 to the writ petition is quashed and set aside.

The issue which comes next is whether and to what extent the relief prayed by the petitioner can be moulded specially where the appeal filed by the petitioner against the order of refusal of grant of consent passed by the Chairman on 11.5.2016 enclosed at Annexure 8 to the writ petition is pending consideration before the appellate authority in Appeal No. 28/2016.

A rather peculiar situation has arisen in the present case. While the Principal Secretary, Department of Environment and Forest has been notified as a Member of the appellate authority constituted under section 31(2) of 'the Air Act' vide notification dated 22/23.10.1990, the Principal Secretary, Environment and Forest Department, has also been given additional charge of the Chairman, State Pollution Control Board. A strange situation arises where the Principal Secretary, Department of Environment and Forest, would be sitting in appeal over his own order as a Member of the appellate authority constituted under section 31(2) of 'the Air Act'. Obviously since presently Mr. Vivek Kumar Singh, the Principal Secretary,



Department of Environment and Forest, holds additional charge of the Chairman of the State Pollution Control Board, he cannot be permitted to discharge the functions of an appellate authority constituted under section 31(2) of 'the Air Act' and would have to keep away from the appellate proceedings. Meaning thereby the functioning of the appellate body so constituted under notification dated 22/23.10.1990 has become prejudicially effected. Even though the order of refusal to grant consent, put to challenge before the appellate authority by the petitioner, has been passed by Mr. Subhash Chandra Singh, who then held the post of the Chairman, but this would make no difference because Mr. Vivek Kumar Singh has stepped into the shoes of Mr. Subhash Chandra Singh as the Chairman of the Board and thus, until such time he holds additional charge of the Chairman, State Pollution Control Board, he cannot sit in appeal over any order passed by the incumbent occupying the post of the Chairman, State Pollution Control Board. In other words, the appeal filed by the petitioner, as of today, cannot be heard and even if Mr. Vivek Kumar Singh, Principal Secretary, Department of Environment and Forest, is not the author of the order refusing grant of consent passed by the Chairman, which is put to challenge in appeal, yet until such time that he occupies the post of the Chairman, State Pollution Control Board, he is hereby restrained from functioning as an



appellate authority constituted under section 31(2) of 'the Air Act'.

The issue next is what happens to the petitioner because he is without an appellate remedy and the appeal cannot be heard until corrective measures are taken by the State Government in this regard either for posting of some other Officer as Principal Secretary, Department of Environment and Forest or as the Chairman, State Pollution Control Board.

In the extraordinary circumstances existing and considering that the petitioner's industrial unit has been functional over the period of last five years and until the refusal to grant consent order was passed, there has been no complaints of any statutory violation by the petitioner, to any of the stipulations present in the enactments in question, I am of the considered view that until such time that a final order on the said appeal is passed by a duly constituted appellate body, the unit of the petitioner should be allowed to operate under the supervisory regulatory control of the State Board, who may carry out periodical checks as to the adherence by the petitioner to the pollution control limits prescribed under 'the Air Act' and 'the Water Act'.

The writ petition is allowed with the directions aforementioned.

Let a copy of this order be forwarded to the Chief Secretary, Government of Bihar for taking corrective measures for restoring the



functioning of the appellate body constituted under the enactments in question in the peculiarities noted above.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	15.02.2017
Uploading Date	03.04.2017
Transmission Date	NA

