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IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 03RD DAY OF JULY 2003

BEFORE

THE HON'BLE MR. JUSTICE N.KUMAR

WP No 26318 OF 2003 (GM-Pol)

BETWEEN

1 M/S BRINDAVAN PHOSPHATES PRIVATE LTD
OFFICE AT NO.214/33, 7TH CROSS
CUNNINGHAM ROAD, VASANTHAGAR
BANGALORE-52 REP BY ITS MANAGER
& AUTHORISED REPRESENTATIVE
SYED KHASIM HUSSAINI ... PETITIONER

(By Sri. R.N. Narasimhamurthy - Sr. Advocate
for Sri K SUMAN)

AND :

1 KARNATAKA STATE POLLUTION CONTROL BOARD
8TH FLOOR, SUBHAS CHANDRA BOSE BUILDING
(PUBLIC UTILITY BUILDING)
M G ROAD, BANGALORE-1
REP BY ITS CHAIRMAN

2 THE SENIOR ENVIRONMENTAL OFFICER
KARNATAKA STATE POLLUTION CONTROL BOARD
8TH FLOOR, SUBHAS CHANDRA BOSE BUILDING
(PUBLIC UTILITY BUILDING)
M G ROAD, BANGALORE-1

3 THE ENVIRONMENTAL OFFICER
KARNATAKA STATE POLLUTION CONTROL BOARD
REGIONAL OFFICE: BANGALORE (NORTH)
NO.1830/31, I FLOOR
OPP: KLE COLLEGE GROUND
DR RAJ KUMAR ROAD
BANGALORE
560 010 ... RESPONDENTS

(By Sri: D NAGARAJ FOR C/R1)

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THIS WP FILED PRAYING TO: -

QUASH THE ORDER DT.21-5-2003 ISSUED BY R-1 VIDE ANN.A.

GRANT STAY VIDE ANN.A AND ALL FURTHER PROCEEDINGS THEREON.

This petition coming on for prly. hearing this day, the Court made the following:

ORDER

The petitioner is a company incorporated under the Companies Act, 1956. They are running a factory at premises bearing No.48/N, KIADB Industrial Area, Doddaballapur, after obtaining the necessary permissions from various statutory authorities including the Karnataka State Pollution Control Board for the last 8 years. The petitioner has obtained the required consents under the Water (Prevention and Control of Pollution) Act and Air (Prevention and Control of Pollution) Act. The said consents which are given are valid upto 30.6.2003. The petitioner company is manufacturing Di-calcium phosphate (DCP) which is an important ingredient in the feed for livestock and in fact also for human beings. The petitioners have secured contracts from Karnataka Milk Federation Ltd. and Kerala Co-op.

Milk Marketing Federation Ltd. for supply of their products. One of the wastes that is being generated by the petitioner company is a product called 'waste rock' phosphate which is edible and to be used by both live stock and human beings; it is not hazardous and it does not in any manner cause any problem of any nature to anybody muchless affect the lands or area where it is stored. On the complaint of some villagers and one Green Peace Association when notice was issued to the petitioners, the petitioners replied the same bringing to the notice of the respondents that there is absolutely no substance in the complaint and there is no hazard from the manufacturing process of the petitioner. This was also evidenced by records which have been produced before the respts. The petitioner was served with a notice as per Annexure K dated 25.2.2003 under S.33A of the Water Act and Rule 34 of Water Rules calling upon them to show cause why action should not be taken for the illegalities mentioned in the said notice. The petitioner sent a reply as per Annexure L along with documents L1 and L2. Thereafter nothing was heard. However, on 21.4.03 as per Annexure M the

respondents purporting to exercise the power under S.5 of the Environment (Protection) Act (hereinafter referred as 'the Act' for short) directed the petitioner to lift the sludge already stored in Sy.No.101 of Veerapura village and to ensure that the same is stored within the premises of the industry in a scientific manner with necessary shelter. The petitioner sent a reply as per Annexure N dt. 26.4.2003 bringing to the notice of the respts. that the allegations contained in the said notice under reply are false and therefore, the question of complying with the directions issued in the said notice did not arise. Thereafter, the petitioner was served with Annexure A dt. 21.4.2003 directing the petitioner to close/ stop the industrial activity forthwith and a direction to the Managing Director BESCO, Nerupatunga Rd., to stop the power supply to the petr. forthwith. Aggrieved by the said order, the petitioner has preferred this writ petition.

2. The respondents who had entered caveat have filed a detailed statement of objections traversing all the allegations made by the petr.

in the writ petition and also pointing out how the waste material released from the manufacturing process of the petitioner is hazardous to health and how it has affected the soil where the said material is stored. In the said statement of objections the respondents concede that before passing the impugned order no notice as required under sub-rule (3-b) of rule 4 has been issued but they are defending the said action drawing support from the sub-rule (5) of rule 4 where it is categorically provided that even without notice, such an order could be passed. Therefore, they submit that the writ petition is liable to be dismissed.

3. The learned senior counsel Sri. R.N. Narasimhamurthy submits that the impugned order is passed under S.5 of the Act. R.4 of the Environment Protection Rules of 1986 (hereinafter referred to as 'the Rules' for short) provides how directions are to be issued under S.5 of the Act. He submits if the direction is for closure of the industry, after passing such directions an opportunity is to be given to the person, officer or authority to whom such direction is issued ✓

giving them an opportunity of not less than 15 days time from the date of service of notice to file their objections, if any, and the Central Government is to consider the said objections from the date of receipt of the said objections and thereafter, could issue directions for the reasons to be recorded in writing. In the instant case, admittedly when no such opportunity is given to the petitioner, the impugned order passed is not only in violation of the principles of natural justice but it is contrary to the mandatory requirement of law. Therefore, the impugned order is liable to be set aside.

4. Per contra, the learned counsel for the respondents submitted that though they have not issued any notice as contemplated under sub-rule 3 (a) of R. 4, rule 5 empowers the Central Govt. in case of grave injury to the environment it is not expedient to provide an opportunity to the respondents against the proposed directions, such directions could be issued and the impugned order is an order passed under sub-rule (5) of R. 4 and therefore, it cannot be set aside on the ground of want of opportunity to file objections.

5. From the aforesaid facts and the rival contentions the short question that arises for consideration in this writ petition is whether the impugned order is liable to be set aside on the ground of violation of principles of natural justice and violation of the mandatory requirement of law as contained in sub-rule (3-a) of R. 4 of the Rules. In order to answer the aforesaid point, it is necessary to have a look at S. 5 of the Act which reads as under:

"Power to give directions.- Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government, may in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person officer or any authority and such person, officer or authority shall be bound to comply with such directions."

6. The corresponding rule which provides for the mode in which the said directions are to be issued under S.5 reads as under:

"(1) Any direction issued under Section 5 shall be in writing.

(2) The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given.

(3-a) The person, officer, or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this

behalf the objections, if any, to the issue of the proposed direction.

(3-b) Where the proposed direction is for the stoppage of regulation of electricity or water or any other service affecting the carrying on of any industry, operation or process and is sought to be issued to an officer or an authority, a copy of the proposed direction shall also be endorsed to the occupier of the industry, operation or process, as the case may be, and objections, if any, filed by the occupier with an officer designated in this behalf shall be dealt with in accordance with the procedures under sub-rules (3-a) and (4) of this rule: ✓

Provided that no opportunity of being heard shall be given to the occupier if he had already been heard earlier and the proposed direction referred to in sub-rule (3-b) above for the stoppage or regulation of electricity or water or any other service was the resultant decision of the Central Government after such earlier hearing.

(4) The Central Government shall within a period of 45 days from the date of receipt of the objections, if any, or from the date up to which an opportunity is given to the person, officer or authority to file objections whichever is earlier, after considering the objections, if any, received from the person, officer or authority sought to be directed and for reasons to be

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recorded in writing, confirm, modify or decide not to issue the proposed direction.

(5) In a case where the Central Government is of the opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed direction, it may, for reasons to be recorded in writing, issue direction without providing such an opportunity."

A reading of the aforesaid provisions makes it clear that the Central Government has been empowered in exercise of its powers and performance of its functions under the Act to issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. The power to issue directions includes power to direct the closure, prohibition ✓

or regulation of any industry, operation of their process or regulation of supply of electricity or water or any other service. Rule 4 of the Rules makes it obligatory that any direction issued under S.5 shall be in writing. The said direction shall specify the nature of the action to be taken and the time within which it shall be complied with. Sub-rule 3-A categorically provides that person, officer or authority to whom any direction is issued shall be served a copy of the proposed direction and shall be given an opportunity of not less than 15 days from the date of service of the said notice to file objections, if any, to the issue of the proposed direction. If the direction is for stoppage or regulation of electricity or water or any other service affecting the carrying on of any industry, a copy of the proposed direction shall also be endorsed to the occupier of the industry, operation or process, he shall be given an opportunity to file objections.

7. The proviso to sub-rule (3-b) of R.4 makes it clear that after objections are filed, an opportunity of being heard shall be given to

the objector. If such an opportunity had been given on earlier occasion, such a person is not entitled to any opportunity and he need not be heard again. Therefore, it is clear that the objector has a right to be heard before directions are issued. An obligation is cast upon the Central Government to consider the said objections, hear the objector and then pass orders within 45 days from the date of receipt of the objections.

8. Though the Central Government is the authority under S.5 r/w R.4 to issue certain directions, the said powers have been delegated to the State Government under S.23 of the Act and the impugned order is passed by an authority constituted by the State Government, namely the 1st respondent.

9. In the instant case, admittedly no such opportunity is given to the petitioner to file his objections for the proposed action, viz. direction to stop/close the industrial establishment. When the petitioner has commenced production nearly about 8 years back after

obtaining the requisite licences, permissions from the various statutory authorities and when he has also been granted a consent letter by the Pollution Control Board, which is in force till the end of 30.6.2003, without hearing the petitioner if the industrial establishment is ordered to be closed down, the injury that is caused to the petitioner is irreparable. It has a right to be heard before that extreme step is taken. Therefore, the impugned order passed is not only passed in violation of the principles of natural justice but it is passed in contravention of the mandatory requirement of sub-rule (3-b) of R.4 of the Rules. As such it cannot be sustained.

10. In so far as the contention of the learned counsel for the respondents that in view of sub-rule (5) of R. 4 the authorities have the power to pass the impugned order without notice, is concerned, the impugned order does not disclose that it is an order passed in exercise of the power conferred on the authorities under sub-rule (5) of R.4. A reading of sub-rule (5) of R. 4 makes it clear that in a case where the

Central Government is of the opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed direction, it may, for reasons to be recorded in writing, issue direction without providing such an opportunity. Therefore, it is clear that affording an opportunity is the rule, denial of such an opportunity is only in exceptional cases. If such an opportunity is to be denied, the authority has to state so, the reasons in writing and thereafter, issue directions. The reasons to be stated in such an order is not that there is a likelihood of greater injury to the environment but the reasons should disclose that such a grave injury to the environment would occasion by the conduct of the petitioner and therefore, the said power is exercised. In the instant case, in the impugned order in the penultimate para before the order, it is stated that it is apprehended that there is likely to be a grave injury caused to the surrounding environment including human and animal and thus warrants urgent action to prevent the petitioner from causing further damage to the

environment, health, property, soil, ground water, etc and therefore, they were passing the impugned order. Except this, there is nothing in the order to show as to what is that grave injury, what is the act of the petitioner which has resulted in grave injury. Merely repeating the words in the Rules would not constitute the reasons which are to be recorded in writing by the authorities before exercising the power under sub-rule (5) of R. 4. Therefore, I do not find any substance in the said contention that this order is passed by virtue of the power conferred in the aforesaid provisions.

11. Though the impugned order is liable to be quashed, for the aforesaid reasons, having regard to the nature of the allegations and counter allegations made, I deem it proper to direct the authorities to treat this impugned order as a notice as contemplated under sub-r. (3-a) of R. 4 and the petitioner be given 15 days time to file objections to the said notice so that the respondents could consider the said objections and after giving a personal hearing to the petitioner may dispose of the proceedings pending ✓

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before them within 45 days, from the date of filing of the objections. Hence, I proceed to pass the following:

ORDER

(a) The impugned order at Annexure A dt. 21.5.03 is directed to be treated as a notice under sub-rule (3-a) of R.4 of the Environment (Protection) Rules, 1986 by the respondents.

(b) The petitioner is granted 15 days time from today to file their objections to Annexure A; on receipt of the objections, the authority shall after a personal hearing consider the objections filed by the petitioner and pass appropriate orders as contemplated under sub-rule (4) of R. 4.

(c) Parties to bear their own costs.

Sd/-
Judge

sak/040703