

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12<sup>TH</sup> DAY OF MARCH 2015



PRESENT

THE HON'BLE MR.D.H.WAGHELA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE RAM MOHAN REDDY

WRIT PETITION NO.44828/2013 (GM-POL)

BETWEEN

M/S. DEVI ENTERPRISES  
# 96/A, BASAPPA REDDY COMPLEX  
Y V ANNAYA ROAD  
KANAKAPURA MAIN ROAD  
YELACHENAHALLI  
BANGALORE-560078  
REP BY ITS PROPRIETRIX  
SMT SUKADI DEVI

... PETITIONER

(BY SRI SABARISH GANDHI, ADV., FOR  
SRI DEVARAJ .N, ADV.,)

AND

1. THE ENVIRONMENTAL OFFICER  
KARNATAKA STATE POLLUTION  
CONTROL BOARD (KSPCB)  
REGIONAL OFFICE-  
BANGALORE CITY SOUTH ZONE  
NISARGA BHAVAN  
7TH 'D' MAIN ROAD  
OPP. PUSHPANJALI THEATRE  
SHIVANAHALLI  
THIMMAIAH MAIN ROAD  
BANGALORE-560010

2. THE ASSISTANT EXECUTIVE ENGINEER-  
ELECTRICALS  
BANGALORE ELECTRICITY SUPPLY  
COMPANY (BESCOM)  
S-5, SUB-DIVISION  
BESCOM LTD., ISRO LAYOUT  
BANGALORE-560078
3. THE CHAIRMAN  
BANGALORE WATER SUPPLY AND  
SEWERAGE BOARD (BWSSB)  
K G ROAD, CAUVERY BHAVAN  
BANGALORE-560009
4. JOINT COMMISSIONER  
BRUHAT BANGALORE MAHANAGARA  
PALIKE (BBMP)  
BOMANAHALLI ZONE  
BEGUR MAIN ROAD  
BANGALORE-560002

... RESPONDENTS

(BY SMT PUSHPAKANTHA, ADV., FOR R-1;  
SRI P PRASANNA KUMAR, ADV., FOR R-2;  
SRI PRASHANT T. PANDIT, ADV., FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO  
SET ASIDE AND QUASH THE CLOSURE ORDER DATED  
03.07.2013 VIDE ANNEXURE-D PASSED BY THE FIRST  
RESPONDENT.

THIS WRIT PETITION COMING ON FOR ORDERS  
THIS DAY, CHIEF JUSTICE MADE THE FOLLOWING:

ORDER**D.H.WAGHELA, CJ (Oral)**

1. The petitioner is M/s.Devi Enterprises, represented by its proprietrix Smt.Sukadi Devi ; and the prayer in the petition is to quash the closure order dated 03.07.2013, which is annexed to the petition as Annexure-D. That impugned order appears to have been culmination of a complaint received on 05.02.2013. M/s.Ambe Polymers is described in the impugned order by adding to it : (New Ownership operating in the name of M/s.Devi Enterprises) which was engaged in manufacture of injection moulded components, without obtaining the consent of the Karnataka State Pollution Control Board (KSPCB). According to the impugned order, after receipt of the complaint by the Board against the industry regarding noise pollution, a copy thereof was forwarded to the office of the Environmental Officer, KSPCB at Nisarga Bhavan, Bengaluru and inspection of the unit was carried out on 14.02.2013. At the time of inspection, the unit was not working since it had given a holiday to the workers. Thereafter, a show-cause notice was issued on 23.02.2013, which was neither replied nor complied. Then, another complaint dated 12.03.2013 was made and received by the KSPCB on 15.03.2013. The officer of KSPCB again inspected the industry on 25.03.2013 and reported the observations that the industry was

operating and engaged in injection moulded components, without valid consent of the Board and at the time of inspection, two extruders were working out of six extruder machines. When the industry was not in operation, the noise level inside the establishment was 49 dB and outside the factory, it was 50 dB. Whereas, while the industry was operating with only two extruders in operation, the noise level outside the factory was upto 60 dB and the inspecting officer has drawn a mahazar on the observations made. In view of non-compliance and the noise level crossing the standards fixed under the Noise Pollution (Regulation and Control) Rules, 2000, a notice proposing to issue directions was issued on 04.04.2013 and the industry was called for personal hearing on 16.04.2013, but no one for the industry attended the personal hearing. These facts lead the Environmental Officer of KSPCB to believe that the industry was not interested in complying with the directions of the Board, even though sufficient time was granted and the industry was allowed to continue to operate, whereby Sections 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 ('Water Act' for short) were also violated. It was on such basis that the KSPCB issued directions for closure of the industry under Section 33A of the Water Act read with Rule 34 of the Procedure Rules of KSPCB. Thus, by the impugned order, the petitioner, operating under the new name of M/s.Devi

Enterprises at No.96/A, Basappa Reddy Compound, Y.V.Annaiiah Road, Yelachenahalli, J.P.Nagar Post, Bengaluru, was directed to close the industrial operation or process forthwith and until further orders. Simultaneously, the Managing Director, Bengaluru Electricity Supply Company (BESCOM) was directed to issue necessary directions to the concerned Executive Engineer and Assistant Executive Engineer to stop/cut-off power supply to the said industry “forthwith” and until further orders. The Managing Director of Bengaluru Water Supply and Sewerage Board (BWSSB) was also directed to issue necessary directions to the concerned Engineer not to give water supply to the said unit forthwith and until further orders. The Commissioner, Bruhat Bengaluru Mahanagara Palike (BBMP) was directed to withdraw the licence issued to the said unit forthwith and until further orders.

2. Before the petition could be heard on merits, after issuance of notice on 05.11.2013, it was sought to be withdrawn, without inviting any order by learned counsel Mr.Sabarish Gandhi. None of the respondents have cared, in the meantime, to file any affidavit-in-reply or response to the petition. Upon a query being made to learned counsel appearing on either side about implementation of the impugned order, some shocking and surprising revelations are made

by learned counsel for the respondents on instruction of the officers, who have remained personally present in the Court. It is revealed by Ms.Rekha .R, Environmental Officer of KSPCB that the industry of the petitioner continued to operate for more than at least one month after the impugned order, on account of the fact that the electricity supply was not disconnected in terms of the order. It was revealed by learned counsel for BESCOM, on instruction of Mr.R.Kumar, Assistant Executive Engineer, BESCOM, that the impugned order dated 03.07.2013 was received by BESCOM on 05.07.2013 and the Managing Director had in fact instructed, on 17.07.2013, the Chief Engineer to implement the order. Thereafter, the Chief Engineer wrote a communication to the Superintendent Engineer on 24.07.2013. On 27.07.2013, the Superintendent Engineer wrote to the Executive Engineer and the Executive Engineer in turn wrote to the Assistant Executive Engineer on 02.08.2013 and such letter was sent by post. Therefore, that letter dated 02.08.2013 was received by the Assistant Electrical Engineer on 07.08.2013, which was not immediately implemented and no reason or explanation is given therefor. Ultimately, according to the Assistant Electrical Engineer, one Assistant Engineer implemented the order on 22.08.2013.

3. Learned counsel appearing for BWSSB was not informed whether and when the Managing Director had issued any directions not to give water supply to the petitioner and whether the water supply was ever disconnected. The Commissioner of BBMP appears to have issued a show-cause notice on 28.08.2013 and thereafter what happened is not coming on record, as far as BBMP is concerned.

4. It would be clear from the above record that the noise pollution about which complaint was made in February, 2013 and even the order to close down the industry was made on 03.07.2013, it has not been given effect to either by the petitioner or the other agencies despite usage of the word “forthwith” in the directions issued to such authorities. The KSPCB, which is the body established with the avowed objective of prevention and control of water and air pollution and empowered with the necessary powers and saddled with the duties to control water and air pollution, also failed in its duty of even enforcing its own orders. Under the provisions of Section 37 of the Air (Prevention and Control of Pollution) Act, 1981 (‘Air Act’ for short), whoever fails to comply with the provisions of Section 21 or Section 22 or directions issued under Section 31A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months, but which may extend

to six years, with fine. Cognizance of such offences could be taken under Section 43 of the Air Act, on a complaint made by the Board or any officer authorized by it in that behalf. Similar provisions are made in Sections 41, 44 and 49 of the Water Act. It was fairly conceded at the bar that the KSPCB could have filed appropriate complaint before the Court, but for reasons which are not disclosed, no steps were taken to curb the delay in implementation of its own orders. Such cases of non-enforcement of the mandatory orders are not rare and therefore, it appears that the purpose of the stringent provisions contained in Section 5 of the Environment (Protection) Act, 1986 and the Water and Air Acts are defeated by the very agencies, which are supposed to implement and enforce such orders. It is therefore necessary that the acts of the petitioner and the officers of the respondents, which *prima facie* disclose not only dereliction of duty, but serious criminal offences, are reported in the form of an appropriate complaint before the Court of competent jurisdiction for the purpose of prosecution and trial.

5. The right of clean environment, peaceful living, unpolluted air and humane conditions of living are often read as part of the fundamental right to life enshrined in the Constitution under Article 21. The air and noise pollution have not only attained sustained high



level, but the plight of residents in the residential areas, patients in the hospitals, children studying for their examinations and all the people compulsorily exposed to high levels of noise and air pollution is simply ignored even by the statutory agencies, by not preventing and controlling such pollution. On the other hand, the other agencies, through which the directions of the Board have to be implemented, have openly displayed callous attitude in discharge of their duties and even attempted to press into service their own rules of procedure and requirements of issuing show-cause notices, while the activity prohibited by the mandatory orders of the Board merrily continues in flagrant violation of law, as it is found to have actually happened in the facts of the present case.

6. Under the circumstances, the petition is dismissed with cost, quantified at Rs.10,000/-, which the petitioner shall pay in equal proportion to the respondents. Besides that, directions necessary in the interest of justice and for ensuring the rule of law are issued to KSPCB to file necessary complaint against all the officers concerned of respondent Nos.2, 3 and 4, as well as the petitioner for not implementing forthwith the impugned order dated 03.07.2013. The Court is assured by learned counsel for KSPCB that, after following the procedure required to be followed within the KSPCB for filing of

the necessary complaint/s, the complaint shall be filed as early as may be and preferably within a period of fifteen days, in respect of violation of the impugned order dated 03.07.2013. In view of the internal procedure brought in for filing of an appropriate complaint with proper authorization of the officer, who should be the complainant, and the decision being taken at the higher level within the KSPCB, it is further directed that the decision taken by the Board on the basis of this order and the copy of the complaint, if any, filed by the KSPCB, shall be placed before this Court on 07.04.2015 and the present matter shall be listed on that day for further orders, if any are required.

Sd/-  
CHIEF JUSTICE

Sd/-  
JUDGE