

(2012) 04 P&H CK 0188

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.W.P. No. 19833 of 2011

M/s. Hawkins Cookers Limited

APPELLANT

Vs

Punjab Pollution Control Board
and OthersRESPONDENT

Date of Decision: April 16, 2012**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Water (Prevention and Control of Pollution) Act, 1974 - Section 25, 26

Citation: (2013) 3 EFLT 42**Hon'ble Judges:** Ranjan Gogoi, C.J; Mahesh Grover, J**Bench:** Division Bench**Advocate:** A.K. Chopra and Ms. Roopa Pathania, for the Appellant; Rita Kohli, for the Respondent

Judgement

Mahesh Grover, J.

This civil writ petition has been preferred by the petitioner seeking issuance of a writ in the nature of certiorari for quashing the impugned order dated 14.9.2011 (Annexure P-38) whereby the consent of the petitioner under the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "the Water Act") has been rejected and with a further direction to the Punjab Water Pollution Control Board (hereinafter referred to as "the Board") to grant its consent. The petitioner is a manufacturer of pressure cookers, having its manufacturing plant at Hoshiarpur. According to it, its activity is environment friendly and does not contribute to any pollution and that it is regularly applying for renewal of consents under the provisions of the Water Act and the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "the Air Act") and the last consent granted by the Board was to expire on 8.5.2007. The petitioner applied for consent for a period of 15 years under the provisions of both the Water Act and the Air Act. The petitioner was informed that the fee deposited by it is inadequate and that it was required to

deposit Rs. 50,000/- for each of the consents under the Water Act and the Air Act for further five years which would cover the period from 2007 to 2012. The petitioner company complied with the said requirement.

2. That on 18.3.2008, according to the petitioner, it applied for the consent for 4000 pressure cookers per day to be extended upto 31.12.2012 which was granted and the consent extended u/s 25/26 of the Water Act on the same terms and conditions as was granted to it in the year 2006. One of the prime conditions was that the industry shall not get any process like frosting, buffing, anodizing and furnishing from sub-contractors which themselves have no valid consent of the Board under the requisite provisions of the Water Act and the Air Act.

3. The petitioner once again applied for the requisite consent on 23.2.2009 and also sought no objection certificate for installation/addition of anodizing process to increase its capacity from 600 anodised cookers per day to 1200 anodised cookers per day. This no objection certificate was granted to the petitioner in July, 2009. However, in October, 2009 the Board wrote the petitioner company that they were not complying with certain conditions of the no objection certificate, in particular condition No. 10 and that the industry has increased its production capacity from 2800 Nos. /day to 3056 Nos. /day. After much correspondence the respondent-Board on 12.1.2010 collected the sample of treated trade effluent water for testing from the petitioner's effluent treatment plant and the application for consent made by the petitioner in 2009 was returned asking the petitioner to file a fresh application as the capacity mentioned in the application was 4500 against the consent of 2800 pressure cookers and the capacity of 10000 pressure cookers per day mentioned in letter dated 6.12.2009 and further that the higher pH value of water in samples collected on 12.1.2010 was detected.

4. The respondent-Board thereafter visited the premises of the petitioner in May, 2010 and pointed out the deficiencies whereas the petitioner in turn persisted with its claim that everything was in order.

5. However, according to the petitioner, it waited for the response of the Board and resubmitted its application.

6. In short, one can say that this traffic of exchange of communications continued, with the Board persisting that the petitioner had not complied with the suggestions made by them and the petitioner insisting that the same had been done. Finally, on 11.2.2011 the Board refused consent to the petitioner resulting in appeal being filed by them u/s 26 of the Water Act which was also dismissed vide the impugned order dated 14.9.2011 (Annexure P-38).

7. In the impugned order it was noticed that when the matter came up for hearing on 18.7.2011, it was observed that the appellant industry had taken some remedial measures to control air and water pollution as per the requirement but some more efforts were required to be taken to meet the prescribed norms of the Board and

thus before taking a final decision in the appeal the Board was directed to take fresh samples in the presence of the representatives of the appellant industry as per the procedure and get them analysed from three laboratories, namely, Punjab Biotechnology Incubator, Mohali, Thapar Laboratory, Patiala and the laboratory owned by the Board and result of such exercise was to be communicated to the petitioner.

8. When the appellate authority resumed its hearing it took into consideration the various reports which had been given pertaining to the samples taken under the directions of the appellate authority and a conclusion was arrived at that the petitioner had been running its business illegally for the last many years without installation of E.T.P. and without taking any remedial measures for the control of water pollution. The appellate authority also noticed that the petitioner was discharging highly toxic trade effluent of aluminum which was harmful for the human beings and the pH value of this trade effluent was higher than the prescribed limit. The appellant had also not adopted Karnal Technology and had not installed a rain water harvesting system and thus the appeal of the petitioner was dismissed which has resulted in filing of the instant petition.

9. In the instant petition it was strenuously projected to this Court that the petitioner in fact had never exceeded its sanctioned capacity of manufacturing 2800 pressure cookers per day and that the excess of this capacity (amounting to 2400 units) was not being manufactured in the premises of the company but were merely being assembled.

10. According to the petitioner, it had a valid consent to manufacture 2800 units and the remaining 2400 units were merely being assembled after collecting various parts from the units which are holding franchises and from its sub-contractors and thus strictly speaking it was not violating the condition of manufacturing 2800 units per day and thus was neither violating the terms of the consent nor was it contributing any excess pollution on account of the assembling of 2400 pressure cookers in excess of the sanctioned capacity.

11. This Court on 8.2.2012 directed the Board to monitor the work of the petitioner unit for 7 days in which the petitioner shall manufacture 2800 units as per its licenced capacity and after expiry of 7 days and completion of necessary monitoring the petitioner was allowed to carry on the process of assembly of the other 2400 units in addition to the manufacture of 2800 units and this activity was also required to be monitored by the Board on day to day basis for another 7 days. A comparative data of monitoring of these two periods was required to be submitted to this Court.

12. In accordance with these directions, the status report was filed on 19.3.2012 by the Board. Even though this report is a detailed one, it revealed that the petitioner industry operated its units in a controlled manner during the period of monitoring and it appears that there was a conscious attempt by the industry to adopt stringent

measures to scale down the pollution level in order to get a favourable report. The Board, however, still found the following deficiencies even if the other aspects of controlled manufacturing by inducing stringent measures is ignored and they can be summarised as follows:

(i) The record of generation of spent solution from anodizing process is not maintained by the industry. However, during this monitoring period, the solution from the anodizing tanks was not taken out.

(ii) The industry has been licensed to manufacture 2800 cookers (including 1200 anodized). As per data collected on the basis of physical verification at site during the monitoring period, there is a lot of variation in quantity of Cookers frosted and anodized each day, due to which the quantity and quality of waste water generated from these processes also varies. The exact quantity of waste water generated from these processes could not be known as industry has not provided water meters in these processes.

(iii) In this monitoring period, the industry has also got its product processed (i.e., buffing and frosting) from some outside parties which have not valid consent of the Board under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. The names of these units are:

(I) M/s. Steel Turner, F-16, Focal Point, Hoshiarpur.

(II) M/s. Kwaliti Finishing Works, F-32, Focal Point, Hoshiarpur.

(III) M/s. Shiva Industries, Focal Point, Hoshiarpur.

(IV) M/s. Wadwan Industries, Piplanwala, Hoshiarpur.

(V) M/s. Alpine Industries, Focal Point, Hoshiarpur.

(VI) M/s. New Royal Industries, Focal Point, Hoshiarpur.

(VII) M/s. B.B.S. Enterprises, Tagore Nagar, Hoshiarpur.

By getting the polluting processes out sourced, the industry has not operated in the true spirit of the directions of this Hon"ble Court as it has not carried out the manufacturing of the cookers and operation of polluting processes within its premises.

(iv) During this period of monitoring, it was noticed that earlier number of workers in 2011 were 527 to 618 per day which stand reduced to 361 to 415 per day during this monitoring period i.e., 23.2.2012 to 29.2.2012. Hence reduction in consumption and waste water discharge from the industry.

(v) The industry has developed some of its land for use of trade effluent as per Karnal Technology. Further work was in progress.

(vi) The industry has not installed Sewage Treatment Plant for treatment of its domestic effluent.

(vii) The industry has not provided proper and adequate arrangement to contain air emissions from buffing section.

(viii) The industry has not provided rain harvesting system till date.

The conclusion of the Board can be extracted here below:

In view of the monitoring results as explained above it is concluded that the petitioner industry has the effluent treatment plant to treat the trade effluent generated from the manufacturing of 2800 pressure cookers in its plant including anodizing of 1200 pressure cookers out of these 2800. But this is possible if it is operated under similar controlled conditions as operated during this monitoring period. Further the petitioner industry may carry out assembling of 2400 cookers without polluting process within its premises in addition to 2800 cookers but for this additional capacity operation, the industry has to obtain No Objection Certificate and Consent to operate from the respondent Board under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and under Air (Prevention and Control of Pollution) Act, 1981 which will be decided by the Board on merits on the basis of method and process of manufacturing undertaken by the industry and the available pollution control arrangements of the generated trade effluent.

13. The aforesaid exercise conducted under the directions of this Court clearly reveals that the petitioner is still deficient in certain aspects. The ancillary industry from which it is receiving its parts is not operating under valid consent and, therefore, it is upto the petitioner to address all the concerns raised by the Board.

14. It is not the case of the petitioner that any procedure or process leading to the impugned order has been violated or that the competent authority has exceeded its jurisdiction and thus there is no legal or justiciable issue raised in this petition.

15. The only issue agitated is that the petitioner is compliant of the provisions of the Water Act and the Air Act and the conditions imposed by the Board, whereas the Board insists that the violations and deficiencies are existing in the premises of the petitioner company which need to be addressed and brought in conformity with the suggestions of the Board.

16. We have considered the matter in some detail and are of the firm opinion that the Board which is vested with the powers and technical expertise and know-how is the best authority to determine whether the industry is compliant of the provisions of the relevant Acts which conclusion is based essentially on facts and this Court, therefore, in the exercise of its powers under Articles 226/227 of the Constitution of India would be reluctant to enter into a domain of disputed facts. The petitioner industry in its affidavit has stated that it is willing to comply with the suggestions of the Board and it has also been so projected before this Court during the course of

arguments.

17. If that be so, then we fail to understand as to how the Court's jurisdiction can be invoked to answer the question when the parties to the dispute are alive to a situation and the redressal of which is in the hands of the petitioner itself.

18. We, therefore, dispose of the petition with a direction to the petitioner to comply with the suggestions of the Board and bring its unit in conformity with the provisions of the Water Act and the Air Act, as indicated by the Board, as expeditiously as possible. Once this is done and the intimation given to the Board regarding the unit having become compliant of the provisions of the relevant Acts, the Board shall inspect the premises and take decision in this regard but not later than three weeks from the date of receipt of such information by the petitioner company.

The petition stands disposed of.