

**(2005) 12 JH CK 0006**

**Jharkhand High Court**

**Case No:** W.P.C. No. 5299 of 2005

Bihar Foundary and Castings Ltd.

APPELLANT

Vs

Jharkhand State Pollution  
Control Board and Others

RESPONDENT

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**Date of Decision:** Dec. 7, 2005

**Acts Referred:**

- Air (Prevention and Control of Pollution) Act, 1981 - Section 21
- Constitution of India, 1950 - Article 226

**Citation:** (2006) 1 BLJR 105 : (2006) 1 JCR 164

**Hon'ble Judges:** M.Y. Eqbal, J

**Bench:** Single Bench

**Advocate:** B. Poddar, P.N. Mishra and M.K. Banka, for the Appellant; I. Sen Choudhary, SC-III and A.K. Pandey, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

In this writ application the petitioner has prayed for quashing the order as contained in letter dated 8.1.2005 issued under the signature of Chairman, Jharkhand State Pollution Control Board, Ranchi directing the petitioner to close down its Unit.

2. Petitioner is an Industry, manufactures Iron & Steel Ingot and also CTD Bar and Rods since 1978. Petitioner-Unit was granted consent by the Bihar Pollution Board as required u/s 21 of the Air (Prevention and Control of Pollution) Act, 1981 for the period till 31.12.1999. Thereafter, every year such consent was granted and last consent granted by the Bihar Board was up to 31.12.2001. After the creation of Jharkhand Pollution Control Board, petitioner applied for consent, which was granted till 31.12.2002. Petitioner thereafter, applied for further consent but the

same was not granted because of the alleged violation of the provisions of the Act and the Rules made there under. It is contended by the petitioner that time-to-time inspections were carried out in the factory and all the directions issued by the authorities of the Board have been complied with. Inspite of that the impugned order for closure of the Unit has been passed.

3. Mr. B. Poddar, learned senior counsel appearing for the petitioner submitted that the petitioner informed the authorities of the respondent-Board that it has engaged another consultant to conduct study of environment status. Thereafter, petitioner submitted Environment Management Plan prepared by the said consultant-firm. Petitioner also informed the authority regarding steps taken for installation of fume extraction systems and regularization of the system. But inspite of that consent was not granted and the impugned order was passed for closure of the Unit.

4. Mr. A.K. Sinha, learned Advocate General at the very outset submitted that the impugned order of the authorities of the Board are appealable before the Appellate Tribunal duty constituted under the said Act and therefore, in view of the statutory remedy available to the petitioner, the instant writ application can not be entertained. Learned counsel further submitted that inspite of non grant of consent after 2002 petitioner carried out business. Consequently, the Board had no option but to issue the direction for closure of the Unit.

5. A noticed above, the contention of the petitioner is that it fulfilled all the necessary conditions as provided under the Act and the Rules whereas the contention of the respondents is that the petitioner is not fulfilling all those conditions which has to be fulfilled in accordance with law. In such circumstances, I am of the opinion that the appellate tribunal constituted under the Act is the competent authority to adjudicate and decide the issue raised by the parties. The Appellate Tribunal being the appellate authority for the purpose of ascertaining the correct factual position may pass appropriate order in accordance with law.

6. It is well settled by catena of decisions that the writ application under Article 226 of the Constitution of India should not be entertained when statutory remedy is available under the Act, unless exceptional circumstances are made out. In the case of U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, , the Supreme Court held that dispute relates to enforcement of a right or obligation under the statute, a specific remedy is therefore provided in the statute, the High Court should not deviate from the general rule and interfere under Article 226 of the Constitution of India except a very strong case is made out.

7. Recently in the case of U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, the Supreme Court reiterated while discussing the scope of judicial review held that a writ petitioner under Article 226 of the Constitution of India should not be entertained when statutory remedy is available, unless exceptional circumstances are made out.

8. As stated above, the question raised by the parties needs full consideration on the basis of materials brought on record. The Appellate Tribunal is the competent authority to consider that evidence and to decide the question finally.

9. For the reasons aforesaid, this writ application is dismissed at this stage. Petitioner is directed to avail the remedy of appeal as provided under the Act. If such appeal is filed by the petitioner within two weeks from today then the appellate tribunal shall consider the appeal on merit after giving full opportunity of hearing to the parties and decide the appeal within a period of three months from the date of filing of such appeal. Till then no coercive steps shall be taken against the petitioner.