(2011) 07 JH CK 0125

Jharkhand High Court

Case No: Writ Petition (C) No. 3603 of 2011

Shree Balajee Steel Works		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: July 11, 2011

Acts Referred:

- Air (Prevention and Control of Pollution) Act, 1981 - Section 21(4)

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Judgement

D.N. Patel, J.
Having heard counsel for both the sides, Rule.

2. So far as question of interim relief is concerned, looking to the facts and circumstances of the case, especially looking to paragraph Nos. 9 and 10 of the counter affidavit, filed by the Union of India in W.P. (C) No. 45 of 2011, as quoted herein below, it appears that there is, prima facie, a case in favour of the Petitioner.

9. It is submitted that the Ministry of Environment & Forests has issued a moratorium on 13.1.2010 restricting environmental clearances for new polluting industries/projects in 43 critically polluted industrial clusters which include only one cluster i.e. Dhanbad in the State of Jharkhand and not the Barajamada industrial cluster where the iron ore crusher of the Petitioner is located.

10. It is submitted that the notification dated 27.7.2010 issued by Forest and Environment Department, Govt. of Jharkhand, Ranchi is not in consonance with O.M. dated 13.1.2010 issued by the Ministry of Environment & Forest.

(Emphasis supplied)

3. The State of Jharkhand has issued a direction dated 27th July, 2010, which has been referred in the aforesaid paragraph Nos. 9 and 10 of the counter affidavit, mainly relying upon the office memorandum, issued by the Central Government dated 13th January, 2010. Thus, it appears that the direction issued by the State Government dated 27th July, 2010 is based upon some misinterpretation or misreading of the office memorandum, issued by the Central Government dated 13th January, 2010. Therefore, the subsequent order, issued by the Jharkhand State Pollution Control Board at Annexure4 to the memo of this petition is also sailing in the same boat, because this order at Annexure4 has been passed in August, 2010, based upon the direction, issued by the State of Jharkhand dated 27th July, 2010.Thus, there is a prima facie case in favour of the present Petitioner.Moreover, looking to the requirement of Section 21(4), if there is any breach of any of the conditions upon which, the consent was given by the Pollution Control Board, then the State Pollution Control Board can refuse further consent after expiry of the earlier consent. In the facts of the present case, in advance, the State has declared its intention not to grant consent or not to renew the consent, without pointing out, any breach of any of the conditions. Moreover, as per the 2nd Proviso to Sub-Section 4 of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, before refusing further consent under the 1st Proviso of Sub-Section 4 of Section 21, a reasonable opportunity of being heard ought to have been given to the Petitioner. Prima facie, looking to the facts of the case, it appears that the State Government is not alleging any breach of the condition of the consent, previously given by the RespondentBoard, nor any opportunity of being heard has been given by the RespondentBoard to the Petitioner before issuing the direction, as stated in the impugned order in August, 2010. Balance of convenience is also in favour of the Petitioner as the Petitioner, which is a working unit, has never received any notice for breach of any of the conditions, upon which the consent was previously given by the RespondentBoard and the Petitioner has invested sizable amount towards the establishment of the crushing unit. In view of these facts, an irreparable loss will also be caused to the Petitioner, if the stay, as prayed for, is not granted.

4. I therefore stay the operation, implementation and execution of the impugned order, passed by the RespondentsJharkhand State Pollution Control Board, dated 26th/27th August, 2010, which is at Annexure4 to the memo of this writ petition, till the next date of hearing.

5. Counsel for the RespondentUnion of India, RespondentState and other Respondents are seeking time to file their respective counter affidavits.

6. Time, as prayed for, is granted.

7. Rule is made returnable on 25th July, 2011.

8. I hereby, direct the Petitioner to continue with the iron ore crushing activities till the next date of hearing.

9. It is expected from the Jharkhand State Pollution Control Board that on or before the next date of hearing, it will file the counter affidavit and if the Board is relying upon any document, copy of the same will also be filed on or before the next date of hearing, so that the same may be considered by this Court, on the next date of hearing.

10. This matter will be heard alongwith W.P.(C) No. 3277 of 2011.