

(2011) 07 PAT CK 0283**Patna High Court****Case No:** CWJC No. 3376 of 2010

Sanjeev Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: July 6, 2011**Acts Referred:**

- Water (Prevention and Control of Pollution) Act, 1974 - Section 21, 25, 26

Citation: (2011) 4 PLJR 116**Hon'ble Judges:** Jyoti Saran, J**Bench:** Single Bench**Judgement**

@JUDGMENTTAG-ORDER

Jyoti Saran, J.

Heard learned counsel appearing on behalf of the parties.

2. The writ petition originally was filed for issuance of a writ in the nature of certiorari for quashing letter no. C.P. 296/ 09 dated 23.11.2009 issued by the Member Secretary, Bihar Pollution Control Board, Patna and memo no. 229 dated 6.2.2010 issued by the Sub-Divisional Magistrate, Masaurhi, where under directions were issued to the petitioner to stop the operation of his Rice Mill which according to the respondents was being operated in violation of the provision of the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as "the Act".

3. The petitioner is a proprietor of Rice Mill being run in the name and style of "Pooja Rice Mill" situated in Village-Koriawan, P.S.-Masaurhi in the district of Patna. On a public complaint made by co-villagers, the Mill of the petitioner was inspected by the authorities of the Bihar State Pollution Control Board, ("Board" for short), on 10.11.2009 and when it was found that the Mill has been established without obtaining a "consent to establish" i.e. the no objection certificate as required u/s 21 of the Act read with Section 25/26 of the Water (Prevention & Control of Pollution)

Act, 1974. During the course of inspection, it was also found that the Mill was within the limit of village habitation and thus did not conform to the statutory limit which required a unit such as unit of the petitioner to be situated not within the distance of 200 meters of the habitation.

4. It is not in dispute that not only the unit of the petitioner is situated within the village habitation of 200 meters, but was also running without getting a no objection certificate from the Board, though the Mill was running since last several years. It is only subsequently that the petitioner filed an application for "consent to establish" (NOC) before the respondent Board on 8.12.2009 and on receipt whereof, an inspection was again conducted on 7.3.2010. A show cause notice was served upon the petitioner on 1.4.2010 asking him to show cause as to why his application seeking "consent to establish" (NOC) be not rejected on grounds of non-conformity of the distance criteria requiring the unit to be beyond a distance of 200 meters of local habitation.

5. It so appears that the petitioner neither filed any show cause nor turned up. It is in this background that the order of closure of unit was passed on 10.6.2010 as placed at Annexure-A/3 to the counter affidavit filed on behalf of the respondent Board.

6. Learned counsel for the petitioner submits that as the Rice Mill has been running since last several years within the local habitation and in due compliance of the provisions of the Act, he had applied for "consent to establish" (NOC) before the respondent Board. It is contended that the inspection carried out by the authorities of the respondent Board was not correct and runs contrary to the local inspection made by the district administration. It is contended that the entire issue is an outcome of business rivalry and animosity and which is also subject matter of a criminal case. It is contended that several Rice Mills are running in the area and the details of which has-been mentioned in paragraph-8 of the interlocutory Application (I.A. No. 4350 of 2011) filed on behalf of the petitioner for amendment of the prayer by incorporating prayers for quashing the order as contained in memo dated 10.6.2010 placed at Annexure-A/3 to the counter affidavit.

7. Be that as it may, a bare perusal of two reports dated 10.11.2009 (Annexure-A) and the second report dated 7.3.2010 (Annexure-A.1) conforms that the petitioner's unit does not fulfill the required distance criteria as it is situated within 200 meters of the local habitation and thus the distance parameters as required under the provisions of the Act, does not stand satisfied. It is in this back-ground that the show cause notice has been issued to the petitioner requiring him to respond to the situation but he did not do so rather it was sought to be canvassed that the show cause notice was never served on the petitioner.

8. In normal circumstances, as the petitioner alleges ex parte decisions, this court would have remanded the matter for reconsideration by the competent authorities

of the Board and for passing fresh order after considering the reply filed on behalf of the petitioner, but in view of the admitted position that the unit indeed is located within the village habitation and does not qualify the distance requirement of 200 meters from the local habitation, no purpose would be served in remanding the matter.

9. For the reasons aforesaid, no indulgence can be granted to the petitioner in relation to the prayer made in the writ petition and the same is rejected. Consequently the writ petition is dismissed.

10. At this stage, learned counsel for the petitioner, submits that any fresh application filed by the petitioner for consent after observing the statutory requirements, may be considered without any prejudice by the Board.

11. It goes without saying that any such application filed on behalf of the petitioner after shifting the unit to a new place and upon fulfilling the statutory requirements, shall be considered afresh and disposed of in accordance with law. The Board shall also examine the veracity of the statements made by the petitioner in paragraph-8 of the interlocutory application and if found correct, take all possible steps in accordance with law.

12. The I.A. No. 4350 of 2011 is disposed of.