

M/S Al Haq Food Pvt. Ltd. Through Its ... vs State Of U.P. Through Additional Chief ... on 31 May, 2023

Author: Devendra Kumar Upadhyaya

Bench: Devendra Kumar Upadhyaya

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2023:AHC-LK0:39993-DB

A.F.R

RESERVED

Court No. - 1

Case :- WRIT - C No. - 4368 of 2022

Petitioner :- M/S Al Haq Food Pvt. Ltd. Through Its Director Namely Mohd. Anwar

Respondent :- State Of U.P. Through Additional Chief Secretary Forests And Environment A

Counsel for Petitioner :- Salil Kumar Srivastava, Abhinav Singh, Lalita Prasad Misra, Rahul

Counsel for Respondent :- C.S.C., A.S.G.I., Ashok Kumar Verma

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Om Prakash Shukla, J.

(Per Om Prakash Shukla, J.) (1) Heard Dr. L.P. Mishra and Shri Abhinav Singh, learned Counsel representing the petitioners, Shri S.C. Mishra, learned Senior Advocate, assisted by Shri Ashok Kumar Verma, learned Counsel representing the U.P. Pollution Control Board and learned State Counsel for the State-respondents.

(2) The petitioner-M/s Al-Haq Foods Pvt. Ltd., which is a Private Limited Company registered under the provision of the Companies Act, has sought to invoke the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India to challenge two orders dated 11.07.2020 passed on the same day by the Chief Environmental Officer, Circle-5, U.P. Pollution Control Board, Lucknow, whereby the 'consent to operate' slaughterhouse (integrated meat shop) of the petitioner

was refused (i) under Section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 (hereinafter referred to as "Water Act, 1974"); and (ii) under Section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 (hereinafter referred to as "Air Act, 1981") as amended and by both the impugned orders, the petitioner has been also directed to comply with the mandatory provisions of Water Act, 1974 and Air Act, 1981.

Though the petitioner had also sought a direction for declaring the provisions of Section 11-A of the Water Act, 1974 as ultra vires to the Constitution as well as to the provisions of the Water Act, 1974, however, during the course of arguments, learned Counsel representing the petitioner has given up the said challenge.

FACTUAL MATRIX (3) Shorn off unnecessary details, the case of the petitioner as narrated in the pleadings available on record and having gathered from the arguments of the respective parties is that sometimes in the year 2014, the petitioner, M/s Al Haq Foods Pvt. Ltd., applied for 'No Objection Certificate' (hereinafter referred to as 'NOC') for establishment of modern integrated slaughterhouse at U.P.S.I.D.C. Industrial Area, Unnao. The District Magistrate, Unnao, vide order dated 21.05.2015, in consultation with all district stakeholder departments, granted NOC to the petitioner's unit for establishment of modern integrated slaughterhouse with 69 conditions enumerated in the said order dated 21.05.2015 itself, however, the period of expiry has not been prescribed in the aforesaid order dated 21.05.2015. Further, condition no. 68 of the aforesaid order dated 21.05.2015 stipulates that it will also be mandatory to follow the instructions given in future, whereas condition no. 69 stipulates that NOC will automatically be deemed to be cancelled for any kind of irregularity or violation of any of the conditions.

(4) Thereafter, vide office memorandum dated 21.10.2016, the State Level Committee, which has been constituted for implementation of various aspects related to operation of modern integrated slaughterhouse, by the State Government, had issued NOC to the petitioner's unit with 12 conditions. Condition No. 11 stipulates that before starting operation of the project, no-objection will have to be obtained from the Uttar Pradesh Pollution Control Board within three months. It was also stated in the aforesaid office memorandum dated 21.10.2016 that after NOC given by the State Level Committee, the concerned firm will submit an application in accordance with rules to the Member Secretary, U.P. Pollution Control Board, Lucknow, who, in turn after issuing NOC within three months for the operation of the scheme to the concerned firm, shall make available the compliance report to the State Level Committee.

(5) Pursuant to the aforesaid office memorandum dated 21.10.2016, the petitioner's unit had moved an application for granting NOC to the Member Secretary, U.P. Pollution control Board, Lucknow, which was apparently received in the office of U.P. Pollution Control Board on 21.11.2016. After that the Member Secretary, U.P. Pollution Control Board, Lucknow accorded NOC to the petitioner for establishing the slaughterhouse with certain conditions vide order dated 04.01.2017. The relevant portion of the order dated 04.01.2017 is extracted hereinbelow :-

"
,
21.11.16 ()

i

() ¢ £

□ ¥

i

□ ¥

() £ f §-i ¤- 13, 14, 29, 30, 44, 45, 46 i i ¢- 72, 73 ' § ,

“ - 2,

() f () ¤ □ - 50 / , i §« §i §- 20 / ,

¥ - 10 / (<) ¢ ¢ f 300 ¥ ¥ (> □

'

f 385 (¢)

“ □ f > □ > §□ § > □ - 2 / ° - 2 / f

-

1. ° “ ¢ « □ □ □ « >

□ i □

° “ ¢

£

02 □ ¢ □ £

° □ □

2. □ □

3. □

“§ § § £ £

□

4. ¢ >

£ □

5. □ ¢ « ¤

£ □

6. « ¥ £

□

7. £ □

8. 6 § §i ¢§ « £ □ £

> .□ □ / £
 £ □

9. – (¥□ >) §i §> §i ×§
 □

10. < □

11. () □ , 1986 □
 □

12. □ ¢ □ i °
 « □ > □

13. £ £ □ □ ¢ ×
 □

14. □ « □

15. □ < □ □ ¢
 ¥ / □ □

16. □ □ - 21.5.15
 □

17. □ «

□
 «¥ 36791LG000117, RS. 10,00,000/- « >
 □ ¥

□ i □
 « > □
 ¥ □ □ £ □ °
 i « □
 31.02.2017 £ □ i £
 □ i □ ¥
 ¢ "

(6) A bare perusal of the aforesaid order dated 04.01.2017 reveals that conditions enumerated in the NOC given by the District Magistrate, Unnao vide order dated 21.05.2015 shall be complied with in letter and spirit; the period of aforesaid consent/NOC to establish the slaughterhouse was two months; the petitioner ought to submit first compliance by 31.02.2017; and further progress report was to be submitted from time to time.

(7) It would be pertinent to mention that in the interregnum, in compliance of the directions issued by the Hon'ble Apex Court in Writ Petition (C) No.330 of 2001 (Common Cause Vs. Union of India & Ors.), Writ Petition No. 44 of 2004, Contempt Petition No. 124 of 2015 and connected Writ Petition (C) No. 309 of 2003 (Laxmi Narain Modi Vs. Union of India and Ors.) on 17.02.2017, the State Government had issued the Government Order dated 07.07.2017 containing 24 point compendium regarding various compliances.

(8) Apparently, after lapse of more than two years i.e. on 12.06.2019, the petitioner, after creation of all requisite paraphernalia and after establishing the industry, applied for grant of 'consent to operate' (CTO) under Sections 25 (1) (b) and 26 of the Water Act, 1974 and under Section 21 read with section 22 of the Air Act, 1981, which was rejected by means of order dated 06.11.2019 inter alia on the ground that the petitioner had not yet submitted the required clarification/ information regarding the compliance of 24 points compendium as per Government Order dated 07.07.2017. This order dated 06.11.2019 had attained finality as it was never assailed by the petitioner. However, on 06.06.2020, the petitioner again applied to the Uttar Pradesh Pollution Control Board for 'consent to operate' under Section 25 (1) (b) and Section 26 of the Water Act, 1974 and Sections 21 read with Section 22 of the Air Act, 1981, which again came to be rejected vide impugned orders dated 11.07.2020, stating that it is required from the Project Proponent to submit the re-validated NOCs from different departments as well as from the State Level Committee according to Government Order dated 07.07.2017.

(9) The impugned orders record that the petitioner had not submitted compliance of different points raised in previous CTO rejection letter dated 06.11.2019. In respect of compliance of 24 points compendium, although the impugned orders record that the petitioner had submitted NOC of CVO dated 06.5.2020, NOC from ARTO dated 14.05.2020 and application submitted for NOC from Food Safety and Standards Authority, dated 19.05.2020, however it also records that the petitioner had not submitted re-validated NOCs from District Magistrate, Unnao and State Level Committee set up for considering grant of NOC for establishing slaughterhouse units.

(10) It is these orders dated 11.07.2020, which are under challenge in the instant writ petition.

MAINTAINABILITY OF THE WRIT PETITION (11) Learned Senior Counsel representing the U.P. Pollution Control Board has raised a preliminary objection regarding maintainability of the writ petition and has contended that the instant petition under Article 226 of the Constitution of India is not maintainable in view of the availability of an alternative statutory remedy of appeal against the order of refusal of consent before the National Green Tribunal under Section 28 of Water Act, 1974 and Section 31 of the Air Act.

(12) The learned Counsel representing the petitioner, on the other hand, has made objection to the aforesaid submission of the learned Senior Counsel representing the U.P. Pollution Control Board and vehemently argued that the instant writ petition is maintainable. His submission is that alternative remedy is not an absolute bar, rather it is a self-imposed restriction to be exercised on the well settled principle that an exercise suffering from want of jurisdiction, vice of violation of principle of natural justice or in violation of fundamental right or statutory right, can be a subject matter of challenge in a writ petition under Article 226 of the Constitution of India can be entertained. According to the learned Counsel, in the instant case, the impugned orders have been passed without undertaking any exercise of inspection etc. as contemplated under Section 25 (3) of the Water Act, 1974 read with Rule 5 of the U.P. Water (consent of discharge of sewage and trade effluents) Rules, 1981 and Section 21 (3) of the Air Act, 1981 read with Rule 28 of the U.P. Air (Prevention and Control of Pollution) Rules, 1983. Therefore, it is the submission of the learned Counsel that the impugned orders cannot be termed to have been passed under Section 25 (2) (b) of the Water Act, 1974 and under Section 21 (4) of the Air Act, 1981 as has been camouflaged by the impugned orders. He further argued that the principle of natural justice was not followed by the statutory authorities before passing of the impugned orders and as such the same are in violation of the fundamental rights granted to the petitioner under Article 19 (1) (c) and Article 14 of the Constitution of India as no opportunity of hearing was afforded to the petitioner before undertaking the impugned exercise. Hence the instant writ petition was maintainable before this Court.

(13) To strengthen his submission, he has placed reliance upon the judgments of the Apex Court in Radha Krishan Industries Vs. State of Himachal Pradesh and others : (2021) 6 SCC 771, M/s Magadh Sugar & Energy Ltd. Vs. The State of Bihar & others (Civil Appeal No.5728 of 2021 decided on 24.09.2021) and the judgment of this Court in Rajendra Prasad Upadhyay Vs. State of U.P. and others (Special Appeal No. 73 of 2012, decided on 19.03.2012) and Piscesia Sarvonik Jv LLP through Designated Partner DLF Corporate Park Haryana Vs. State of U.P. and others (Criminal Misc. Writ Petition No. 1008 of 2003, decided on 15.02.2023).

(14) Both the parties have been heard at considerable length on the preliminary issue as to whether the petitioner be relegated to avail the remedy to file an appeal under Section 28 of the Water Act and Section 31 of the Air Act before the National Green Tribunal or in the presence of such remedy, whether the instant writ petition is maintainable or not.

(15) Having heard the learned Counsels on the issue of preliminary hearing, this Court is of the view that the existence of alternative remedy is not an absolute bar, is a legal proposition, which does not require any detailed discussion. It is settled law that while a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution of India, if an effective and efficacious alternative remedy is available and the existence of an alternate remedy does not by itself per se bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by the Hon'ble Apex Court in Whirlpool Corporation v. Registrar of Trademarks, Mumbai : (1998) 8 SCC 1 and Harbanslal Sahni v. Indian Oil Corporation Ltd :(2003) 2 SCC 107. In Radha Krishan Industries v. State of Himachal Pradesh & Ors (supra), wherein the Hon'ble Apex Court has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. The Apex Court has observed as under :-

"28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

(emphasis supplied) (16) No doubt, the Hon'ble Apex Court has reserved the residual power of the High Court to entertain writ petition in case of enforcement of fundamental rights, however, the Hon'ble Apex Court has also held that in case where there are disputed questions of fact, the High Court would ordinarily refrain from exercising its writ jurisdiction. At this juncture, it would be apt to mention that a three judge Bench of the Apex Court in *Sree Meenakshi Mills Ltd. v Commissioner of Income Tax* : AIR 1957 SC 49 succinctly explained the tests for the identification of questions of fact, questions of law and mixed questions of law and facts. The Apex Court observed that :-

"9.To take an illustration, let us suppose that in a suit on a promissory note the defence taken is one of denial of execution. The court finds that the disputed signature is unlike the admitted signatures of the defendant. It also finds that the attesting witnesses who speak to execution were not, in fact, present at the time of the

alleged execution. On a consideration of these facts, the court comes to the conclusion that the promissory note is not genuine, Here, there are certain facts which are ascertained, and on these facts, a certain conclusion is reached which is also one of fact.

10. In between the domains occupied respectively by questions of fact and of law, there is a large area in which both these questions run into each other, forming so to say, enclaves within each other. The questions that arise for determination in that area are known as mixed questions of law and fact. These questions involve first the ascertainment of facts on the evidence adduced and then a determination of the rights of the parties on an application of the appropriate principles of law to the facts ascertained. To take an example, the question is whether the defendant has acquired title to the suit property by adverse possession. It is found on the facts that the land is a vacant site that the defendant is the owner of the adjacent. residential house and that he has been drying grains and cloth and throwing rubbish on the plot. The further question that has to be determined is whether the above facts are sufficient to constitute adverse possession in law. Is the user continuous or fugitive? Is it as of right or permissive in character? Thus, for deciding whether the defendant has acquired title by adverse possession the court has firstly to find on an appreciation of the evidence what the facts are. So far, it is a question of fact. It has then to apply the principles of law regarding acquisition of title by adverse possession, and decide whether on the facts established by the evidence, the requirements of law are satisfied. That is a question of law."

(17) Therefore, the test that is to be applied for the determination of a question of law is whether the rights of the parties before the Court can be determined without reference to the factual scenario. In this case, as has been argued, refusal to grant 'consent to operate' by means of the impugned orders dated 11.07.2020 is violative of right to occupation, trade and business as guaranteed under Article 19 (g) of the Constitution of India, particularly the background of the fact that the petitioner has a right to run the business in respect of which the permission to establish the unit was accorded by U.P. Pollution Control Board by means of letter dated 04.01.2017. Apparently the issues raised by the petitioner are questions of law which can be decided upon a comprehensive reading of various provisions of Water Act, 1974, Air Act, 1981 and other provisions of the Act as well as various Government Orders and legal propositions on the issue to grant of 'consent to operate' the modern slaughterhouse. Thus, we are of the considered opinion that the questions raised by the petitioner can be adjudicated without delving upon any factual dispute. Thus, we proceed to hold the instant petition maintainable under Article 226 of the Constitution of India.

(18) For the reasons aforesaid, we are persuaded to entertain the instant writ petition while rejecting objection regarding maintainability of the writ petition raised by the learned Senior Counsel representing the U.P. Pollution Control and the learned Counsel representing the State.

SUBMISSIONS OF THE PARTIES ON MERIT OF THE CASE (19) Challenging the impugned orders by which 'consent to operate' under Section 25/26 of the Water Act, 1974 and 21/22 of Air Act, 1981

has been refused, learned Counsel for the petitioner has contended that Government Order dated 07.07.2017 was issued in furtherance of judgment and order dated 17.02.2017 passed by the Apex Court in Writ Petition (C) No. 330 of 2021 (Common Cause A Regd. Society Vs. Union of India and others), requiring the Central Government to issue directions in furtherance of recommendation made by the Committee appointed by the Apex Court. The said Government Order dated 07.07.2017 supersedes some of the provisions of Government Order dated 26.11.2014, which stood irrelevant in view of 24 points compendium.

(20) Learned Counsel for the petitioner has submitted that the applicability of the compendium enumerated in the Government Order dated 07.07.2017 is to be categorized mainly under the three heads viz. (i) pre-slaughter; (ii) during slaughter; and (iii) post slaughter. All the conditions as stipulated in the compendium pertaining to (i) pre-slaughter as mentioned above, have already been complied with by the petitioner, however, condition pertaining to aforesaid (ii) during slaughter and (iii) post-slaughter will be complied with only after the unit of the petitioner is permitted to be made functional and operational after grant of 'consent to operate' by the State Pollution Board. He argued that the Government Order dated 07.07.2017 does not provide the steps to be taken for pre-establishing consent or pre-operational or post-establishing consent during the operation of the Government Order dated 26.11.2014. He submits that the petitioner's unit has already been established prior to 2017 and certain permission can be obtained only while operating the unit. Thus, the Government Order dated 07.07.2017 does not operate retrospectively, particularly as it provides for modernizing of already operational industries and also for establishing new industries on the basis of latest livestock census.

(21) Learned Counsel for the petitioner has further submitted that 24 points compendium enumerated in the Government Order dated 07.07.2017 relates to various statutory prescriptions, most of which relate to the operational stage of meat industry. According to the learned Counsel, some of the statutory prescriptions as contained in some of the statutes also relate to establishment stage which are the same as provided as conditions of consent for establishment dated 04.01.2017 given by the U.P. Pollution Control Board to the petitioner. Thus, Government Order dated 07.07.2017 does not require that the NOC issued earlier by the District Magistrate, Unnao or by the State Level Committee would require any re-validation. In any case, the learned Counsel submits that the NOC granted by the District Magistrate or the State Level Committee having no expiry period mentioned therein, the issuance of the impugned orders are wholly arbitrary and illegal.

(22) Placing reliance upon the judgments of the Apex Court in State of Madhya Pradesh and others Vs. Tikamdas : (1975) 2 SCC 100, Chairman Railway Board and others Vs. C.R. Rangadhamaiah and others : (1976) 6 SCC 623, J.S. Yadav Vs. State of U.P. : (2011) 6 SCC 570, Canara Bank and another Vs. M. Mahesh Kumar : (2015) 7 SCC 412, Bharat Sanchar Nigam Ltd. Vs. Tata Communication Ltd. : (2022) SCC On-Line SC 1280, learned Counsel for the petitioner has submitted that a Government Order otherwise also cannot have any retrospective operation nor can it override any statutory prescriptions. It also cannot divest a person of any already vested or accrued right, more particularly in the case in hand, wherein more than Rs. 200 Crore have been already invested by the petitioner in establishing the meat industry in furtherance of NOC/consent for its establishment having been granted by the State functionaries.

(23) Learned Counsel for the petitioner, thus, has submitted that it is not the case of the respondents that the petitioner's industry is lacking any requirement for establishment of meat industry as per conditions imposed vide consent for establishment, dated 04.01.2017. He submits that the adherence to all other statutory conditions as mentioned in the statutes comprising 24 points compendium are to be checked and verified only after the industry comes into operation. In this backdrop, his submission is that the impugned orders are wholly arbitrary, illegal and unconstitutional.

(24) The learned Counsel for the petitioner addressing to the plea of the respondents that the petitioner has not challenged the order dated 30.07.2020 rejecting the request of reviewing the impugned order dated 11.07.2020, has placed reliance upon the judgment of the Apex Court in DSR Steel (Private) Limited Vs. State of Rajasthan and others : (2012) 6 SCC 782 and Bussa Overseas and Properties Private Limited and another Vs. Union of India : (2016) 4 SCC 696 and has argued that the order dated 30.07.2020 need not to be challenged as doctrine of merger does not stand attracted in a situation where prayer for review has been refused.

(25) So far as prayer being made on behalf of the U.P. Pollution Control Board for deferring of the hearing the writ petition in view of the order dated 03.05.2023 passed by National Green Tribunal in O.A. No. 879 of 2012 (IA No. 38 of 2022) is concerned, learned Counsel for the petitioner has submitted that the order dated 03.05.2023 passed by the National Green Tribunal, Principal Bench, New Delhi in O.A. No. 879 of 2022 (Gauri Maulekhi Vs. Union of India and others) does not provide that an already established meat industry shall not be allowed to operate. His submission is that environmental concerns in regard to the meat industry stand regulated under the Water Act, 1974 and the Air Act 1981 and as and when the Environmental Protection Notification 2006 framed under the Environmental Protection Act, 1986 would proceed to include a meat industry, the relevant norms would have to be adhered to by all the industries including the petitioner. Thus, the application for deferment of hearing is misconceived.

(26) Learned Senior Counsel representing the U.P. Pollution Control Board has vehemently opposed the aforesaid arguments advanced by the learned Counsel for the petitioner and has argued that in the Government Order dated 07.07.2017 itself, it has been mentioned that Government Order dated 26.11.2014 has been superseded, therefore, all NOCs granted pursuant to the Government Order dated 26.11.2014 stood superseded. He argued that in para-3 of the Government Order dated 07.07.2017, various statutes from point no. 1 to 24 have been referred. While disposing of the application of the petitioner for 'consent to operate' as regards point nos. 13 to 20 and 24 which relates to U.P. Pollution Control Board, it has been mentioned that the compliance verification of these points will be possible only during the operation of the industry. The petitioner has not submitted the clarification/information in the compliance of 24 points compendium.

(27) Learned Senior Counsel has drawn our attention to para-3 of the Government Order dated 07.07.2017 and has argued that so far as the earlier Government Order dated 26.11.2014 is concerned, it has become irrelevant as several provisions in view of the Government Order dated 07.07.2017 have become irrelevant/redundant. He argued that a bare perusal of the points no. 1 to 12 of the Government Order dated 07.07.2017, it is apparent that various enactments referred in the

compendium have been amended and certain important provisions for its compliance have been inserted. Furthermore in sub-para (4) of para-4 of the Government Order dated 07.07.2017, it has been mentioned that for establishment of slaughter house, the data collected by the Committee constituted under the aforesaid paras relating to livestock will be relevant and if the District Level Committee finds the justification of establishment of Slaughterhouse, it will be placed before the District Level Committee whose recommendations will be placed before the State Level Committee which will take the decision with regard to establishment of Slaughterhouse.

ANALYSIS (28) Having heard learned Counsel for the parties and having traversed the aforesaid facts and the provisions that have been placed before us as well as the decisions and directions of the Apex Court, there is no dispute to the fact that pursuant to the NOC having been granted by the District Magistrate vide order dated 21.05.2015 and thereafter by the State Level Committee vide order dated 21.10.2016 and also by the U.P. Pollution Control Board vide order dated 04.01.2017, the petitioner has established modern slaughterhouse plant and has applied for 'consent to operate' the plant, which has been refused by means of the impugned orders dated 11.07.2020 inter alia on the grounds that the petitioner has not submitted re-validated NOCs from District Magistrate, Unnao, State Level Committee related for slaughterhouse unit.

(29) Water Act, 1974 is a comprehensive legislation that regulates agencies responsible for checking on water pollution and ambit of Pollution Control Boards both at the level of Centre and States. The Water Act, 1974 was adopted by the Indian parliament with the aim of prevention and control of water pollution in India. Section 25 of the Act, 1974 states that prior consent of the State Board under Section 25 of the Act, 1974 is necessary to set up any industry, plant or process which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land or bring into use any new or altered outlets for the discharge of sewage or begin to make any new discharge of sewage. Section 25 of the Water Act, 1974 further states that every State Board is liable to maintain a register containing particulars or conditions imposed under the section related to any outlet, or to any effluent, from any land or premises which must be open to inspection by the state board. Section 25 of the Water Act, 1974 is extracted hereinbelow :-

"25. Restrictions on new outlets and new discharges.--

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,--

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage: Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before

the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.] (3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed. 2[(4) The State Board may--

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being--

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any

outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.] (7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,--

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge."

(30) Section 26 of the Water Act is the provision regarding existing discharge of sewage or trade effluent and the same is reproduced as under :-

"Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land, the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section 2 shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette."

(31) Section 21 of the Air Act, 1974 prevents a person from establishing or operating any industrial plant in the air pollution control area without the previous consent of the Board. Sub-clause (4) of Section 21 of the Air Act, 1974 empowers the Board to either grant or to refuse to grant the consent by passing an appropriate order. The proviso to the sub-clause (4) of Section 21 of the Air Act, 1974 also empowers the Board to cancel a consent before the expiry of the period for which it had been granted in case the conditions for grant of consent are not fulfilled. Section 21 of the Air Act, 1974 is reproduced as under :-

"21. Restrictions on use of certain industrial plants.

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area :

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed :

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused, (3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent.

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned.

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely -

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;

(v) such other conditions as the State Board, may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied within such period as the State Board may specify in this behalf :

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months :

Provided further that-

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-created except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred in to sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be

bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally."

(32) A bare perusal of the aforesaid provisions clearly reveals that the Board is bestowed with three different powers, namely, the power to grant the 'consent to operate', the power to renew the said consent and the power to revoke the said consent prior to the end of the term for which the consent order is given. Sub-clause (3) of Section 21 imposes a legal duty that in case an application for consent is filed under sub-section (1), then the Board shall inquire and follow such procedure as may be prescribed.

(33) Section 21 (4) of the Act empowers the Board to either grant the consent to operate or to refuse such consent. However, while exercising either of the two powers, the Board is required to record its reasons for granting, for imposing the conditions, or for refusing to grant the consent. The first proviso to Section 21(4) further empowers the Board to revoke the consent to operate in case the conditions subject to which such a consent had been granted, are not fulfilled. According to second proviso, before cancelling a consent or refusing a further consent (renewal of consent) a reasonable opportunity of being heard has to be given to the person concerned. Section 21 (5) of the Act lays down the conditions which need to be complied with by the operating unit.

(34) It is, indeed, a settled principle of law that if a procedure has been prescribed under a statute, the appropriate authority is legally bound to adhere to the said procedure.

(35) The stand of the petitioner is that once the petitioner has already been granted NOCs for establishing the modern slaughterhouse and in pursuance of that the petitioner has established the modern slaughterhouse, therefore, after establishment of the unit, the refusal to grant 'consent to operate' by asking the petitioner to seek re-validation of the NOCs from District Magistrate and the State Level Committee related for slaughterhouse units, by means of the impugned orders under the garb of Government Order dated 07.07.2017, is arbitrary and illegal.

(36) This Court finds that although it is not the case of the U.P. Pollution Control Board that it has made any attempt to either prohibit slaughtering or vending of animal food, however they have taken a consistent stand that they are empowered under both the Acts i.e. Water Act and Air Act to regulate this business and vending for ensuring lawful methods to be adopted and to prevent unlawful methods for carrying of such trade and business in order to protect the environment in the light of the decision of the Apex Court dated 17.02.2017 rendered in Common Cause Vs. Union of India (supra), Laxmi Narayan Modi Vs. Union of India (supra) as well as Government Order dated 07.07.2017 issued in compliance of the aforesaid decisions of the Apex Court and the order dated 03.05.2023 passed by the National Green

Tribunal in Original Application No. 879 of 2022 : Gauri Maulekhi Vs. Union of India and others. There is also no dispute that such trade and business can be regulated including by licensing provisions. There is also no dispute that such trade and business has been permitted by the appropriate regulations under the relevant laws and the Rules and Regulations. Thus in the absence of any such plea on behalf of the U.P. Pollution Control Board to impose prohibition of such trade and business which also is not directly reflected in the Government Order dated 07.07.2017, there cannot be any assumption or presumption of such prohibition or else that would violate constitutional rights and the fundamental rights guaranteed under the Constitution of India.

(37) At this juncture, it would be apt to mention that the Government Order dated 07.07.2017 deals with the 'consent to operate' the modern slaughterhouse. The Government Order dated 07.07.2017 is reproduced as under :-

-3710/ 8-2017-2 .i /12 . .

, , ¢ ,

,

1. > ,

2. , , , . d

3. □ □ ,

4. , ,

5. □ □ , / ¢ ,

-8 . ff 07 □ “, 2017 f § ¢ ¢
¢ () - 330/2001 □« < , ¢ -
44/2004, ¢ -124/2015 £ ¢ - 309/2003
« µ ° > 17.02.2017
□ ¶ ¢ « □ -

, § ¢ ¢ □ ¶ « □ « ¶
« □ ¢ - () 309/2003, « ¢
° > « □ § ¢ ¢ -
¢ , , i □ §
- 7/4/2011- i . > « . > . 02.07.2012 -
□ □ ¶ ¢
« □ □ • - 1838/ 8 -

8-2012-2 .i ./2012 11 « , 2012 " □ " -
 ¥, □ ¢ / ¢ , □ , , ¢ i £ , ,
 ¢ □ £ ,
 ¥ □ ¶ ¢ - " □ "
 ‡ £ □ ¶ □
 £ □ ¶ £ □ □
 -2394/ ‡-8-2014-03 («□)/2014 26.11.2014 £

2. § ¢ ¢ ¢ () -330/2001 □«
 < , ¢ - 44/2004, ¢ 124/2015 £
 ¢ - 309/2003, « ° > i
 □ ¶ « □ ¢ ¶ " i 17.02.2017
 (Judgement) ¥f-

"Pursuant to our orders dated 26.09.2016 and 28.10.2016, a compendium of the Indian Standards has been prepared along with all relevant material in consultation with all the stake-holders. The Union of India is directed to print the compendium in sufficient numbers and circulate it to all the State Governments and Union Territories for compliance. The Union of India will comply with our orders within six weeks from today. In the event there is non-compliance with the Indian Standards, other rules and regulations, the petitioners are entitled to approach the concerned district collector or the judicial authorities, as the case may be in a given specific instance."

3. § ¢ ¢ / □
 compendium □ , , -
 □ ¶ £ / , ¢ □ □
 ¥ f-

S.N. STATUS/STANDARD/GUIDELINE

1. Prevention of Cruelty to Animals Act, 1960 (relevant Sections: 3(p.3), 9(b) (p.6), Section 9 (e) (p.6), 11 (p.7,8) and 38(P.15,16)
2. Transport of Animals Rules, 1978(as amended in 2001 and 2009)
3. Prevention of cruelty to Animals (Transport of Animals of Foot) Rules 2000
4. Prevention of Cruelty to Animals (Slaughter House) Rules 2001
5. Performa for Ante and Post Mortem Fitness Certificates to be issued by the veterinary Doctor after examining the animals before and after slaughter of animals as per Rule 4(3) of the Prevention of Cruelty to Animals (Slaughter House) Rules, 2001 [Relevant documents: Letter from AWBI to Director/Commissioner, Municipal Administration of all States and Union Territories, dated

17.10.2016 (p.49); Letter from AWBI to CEO Food Safety & Standards Authority, dated 17.10.2016(p.50) Letter from FSSAI to All Central Licensing Authorities and Commisioners of food safety of all States/UT's (p.51)

6. Draft Prevention Of Cruelty to Animals (Regulation of livestock market) Rules 2016

7. Central Motor Vehicles (Eleventh Amendment) Rules, 2015[Relevant Rules: Rule 125 E(p.62)

8. Central Motor Vehicles (13th Amendment) Rules, 2016 [Relevant Rules: Rule 125 E(p.71)

9. Food Safety and Standards Act 2006 [Relevant Sections-Section 92 (p.118,119)]

10. Food Safety and Standards (Licensing and Registration of food Additives) Regulations 2011 [Relevant regulations Part IV (p. 161-178)]

11. Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011 [Relevant regulations- Regulation 2.5 (p. 265)]

12. Agriculture and Processed Food Product Export Development Authority (Amendment) Act, 2009 [Relevant Sections-section 4 (p.344) and section 12 (p.349)]

13. Environment Protection Act 1986 [Relevant Section-6 & 25(p.356)

14. The Environment (Protection) Rules, 1986 [Relevant Rules- Effluent Discharge Standards. S. No. 509(p.357)

15. (Revised Draft) Effluent Discharge Standards for Slaughter House to be notified by the MoEF [Relevant Rules- Effluent Discharge Standards. S.No. 50 (p. 360)

16. The water (Preservation and Control of Pollution) Act, 1974 [Relevant Section 24(p.373, 374) , 25 (p.374), 26 (p.375), 27 (p.375,376),28 (p.376)& 33B(p. 378)]

17. The Water (Preservation and Control of Pollution) Act, 1975[Relevant Rules: Form XIII(p.410)]

18. The Air (Prevention and Control of Pollution) Act 1981, [Relevant Section- 21 (p.441), 21A (p.443),23 (p.443), 24 (p.443,444), 31A (p.446),31B (p.446), 37 (p.448), 40(p.448,449), & 41(p.449)]

19. The Municipal Solid Wastes (Management & Handling) Rules 2000 [Relevant Rules-7 (p.456), Schedule II-S.No.1 (iii)(p.458), 4(p.459), 5.(p.459,460),6(p.460), Form II Clause 6 (ii) (p.472)]

20. The National Green Tribunal Act 2010 [Relevant sections 14(p.482),16(p.483)]

21. IS 8895:2015 Handling Storage and Transport of Slaughter house by- produce Guidelines(First revision)

22. IS 1982:2015 Ante Mortem and post mortem inspection of meat animals- Code of practice (second revision)

23. IS 4393:2016 Basic Requirement of an Abattoir(second revision)

24. [Revised] Standards for Discharge of Effluents from slaughter houses, Meat Processing Units and Sea Food Industry.

§ ¢ ¢
17.02.2017 □ □ ¶
□ £ □ □ ¶ £ □ « □
-2394/ ¢-8-2014-03 («□)/2014 26.1.2014 “ □
¥, □
□ ¶ £ / ¢ □ □ □ □
¥

4. § ¢ ¢ ¢ () -330/2001 □«
<, ¢ -44/2004, ¢ - 124/2015 £
¢ - 309/2003 « µ ¢ >
17.02.2017 □ ¶ ¢ « □
□ -2394/ ¢-8-2014-03 («□)/2014 26.11.2014
i - ¥f-

(1) The Food safety and Standards Act, 2006 □ -89 £ - The Provisions of
this Act shall have effect notwithstanding anything inconsistent therewith contained in any other
law for the time being in force or in any instrument having effect of virtue of any law other than this
Act. ¢ □ ¶ ° > ° ¢ ¥ „ £
« ° The Food Safety and Standards Act, 2006
□ -89 i ' □ ¥, □ The Food safety and
Standard (Licencing and Registration of Food Businesses) Regulation, 2011 2.1.2 (1)(5)
> -IV ° □ i ¥ ¶ i
£ i ° / □
□ £ ¥

(2) The Food safety and Standards Act. 2006 i The Food Safety and Standard (Licensing and
Registration of Food Businesses) Regulation, 2011 2.1.2 (1)(5) > -IV
° □ i ¥ ¶ i £
i ' □ « □ □
° / □ □ □

(3) The Food safety and Standards Act. 2006

05.08.2011

□

« § § □ , 1959 i □ , 1916
° □ « □ ¥

(4) □ □ i « □ i £ □

£ ' ¢ ¥, > § § § ¢ ¢ □
□ / / □ ¥ « □ i £ □
□ □ > § § § - , □ □ □
□ - , □ « □ □ -
□ / □ , ¢ □ , « □ £
/ □ □ / □ i
« > □ , § ¢ ¢
□ / i « □
i £ § ¢ ¢ -
> § § § ¥ , ' □
£ ' ¢ □ ¥, □
¢ , □ - □
¢ £ □ □ □
03 □ □ ¢ £ ¢

(5) f ° « □ » □

() ¢ 3710(1)/ #-8-17,
¢ £ i

1- ¢ / ¢ / ¢ , ¢ □ / / / □ / ¢ i
£ / i ' □ / / / ,
, .

2- ,

3- - □ ,/ □ ,

4- ¢ , , i « > , .

5- ,

6- ,

7- > « °

□ • (¥) ¢ "

(38) A bare perusal of the aforesaid Government Order dated 07.07.2017 reveals that it is mandatory for all the slaughterhouse units to comply with the 24 compendium as mentioned in para-3 of the aforesaid Government Order dated 07.07.2017 for consent to operate/establishment of the modern slaughterhouse. We also notice that clause 4 (3) of the Government Order dated 07.07.2017 clearly observes that after enforcement of the Food Safety and Standards Act, 2006 w.e.f. 05.08.2011, the provisions relating to grant of license available under Uttar Pradesh Nagar Palika Adhiniyam, 1916 and Uttar Pradesh Municipal Corporation Act, 1959 have become redundant.

(39) Apparently, the order dated 21.05.2015 issued by the District Magistrate, Unnao while granting NOC to the petitioner to establish the modernized slaughterhouse plant clearly mentioned in condition no.68 that it will be mandatory for the petitioner to follow the direction issued in future and condition no. 69 categorically states about the consequential effect of deemed cancellation of the said NOC, in case of any irregularity or violation of any of the conditions. The order dated 04.01.2017 issued by the U.P. Pollution Control Board clearly mentioned that conditions enumerated in the NOC given by the District Magistrate, Unnao by the aforesaid order dated 21.05.2015 shall be complied with in letter and spirit. Meaning thereby the petitioner is obliged to follow all the directions for continuation of the NOC granted by the District Magistrate, Unnao in future. However, the issue does not rest here as the Government Order dated 07.07.2017 specifically mentions about supersession of the Government Order dated 26.11.2014 and accordingly directs all the slaughterhouse units to comply with 24 point compendium as mentioned in para-3 of the aforesaid Government Order dated 07.07.2017 for consent to operate/ establishment of the slaughterhouse. Thus, since the earlier NOC dated 21.05.2015 was issued in view of the existing Government Order dated 26.11.2014, which as per the Government Order dated 07.07.2017 stands superseded, it was mandatory for all the slaughterhouse units that in order to seek 'consent to operate', the 24 point compendium as mentioned in para-3 of the aforesaid Government Order dated 07.07.2017 be followed. Thus, apparently, there are two aspects of the matter; firstly NOC ought to have been taken as per the Government Order dated 07.07.2017 to establish the unit; and secondly on establishment of unit, the unit ought to have applied 'consent to operate' as per the Government Order dated 07.07.2017.

(40) In the instant case, NOC of the District Magistrate, Unnao was granted before issuance of the Government Order dated 07.07.2017. Although the petitioner had come to establish the modernized slaughterhouse unit, however, the same was not operational and as such it was mandatory for the petitioner to comply with all the terms of the Government Order dated 07.07.2017 including NOC for 'consent to operate' from the District Magistrate, Unnao, State Level Committee and U.P. Pollution Control Board.

(41) It is an admitted fact that the petitioner has not taken NOC from the District Magistrate, Unnao nor has obtained a re-validation of the said NOC in order to comply with the provisions of Government Order dated 07.07.2017, which are mandatory in nature having been issued pursuant to the dictum of the Apex Court in Common Cause vs. Union of India and others (supra) and Laxmi Narain Modi Vs. Union of India (supra), for running the modernized slaughterhouse. Therefore, the U.P. Pollution Control Board has rightly refused to grant 'consent to operate' by means of the impugned orders.

CONCLUSION (42) For the aforesaid reason, we are of the view that there is no error in the impugned orders which may warrant any interference under Article 226 of the Constitution of India by this Court.

(43) The writ petition is, accordingly, dismissed.

(44) Needless to mention that while refusing to grant 'consent to operate' by means of the impugned orders, liberty was granted by the Chief Environmental Officer to the petitioner to comply with the mandatory provisions of law. That being the position, we hope and trust that in case the petitioner complies with the mandatory provisions of law and applies afresh for 'consent to operate' complying with the provision of Government Order dated 07.07.2017, the authorities concerned shall consider the claim of the petitioner in accordance with law expeditiously.

(Om Prakash Shukla, J.)

(Devendra Kumar Upadhyaya, J.)

Order Date :- 31.05.2023

Ajit/-