

Delhi High Court

Gupta Enterprises vs Delhi Pollution Control ... on 5 October, 2007

Author: S R Bhat

Bench: S R Bhat

JUDGMENT

S. Ravindra Bhat, J.

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1. Issue notice. Mr. B.B. Gupta accepts notice for the Delhi Pollution Control Committee, in all the cases; Mr. B.B. Gautam, Advocate accepts notice on behalf of Ms. Aruna Tikku, for the Government of NCT of Delhi. Counsel for the respondents state that they have the original files. With consent of counsel for all the parties in these petitions, these cases were heard finally.

2. In these proceedings under Article 226 of the Constitution of India, the writ petitioners' common grievance is that the Delhi Pollution Control Committee, the first respondent, withdrew authorization and permission to engage in industrial activity, in terms of The Environment Protection Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981 and the Hazardous Waste (Management and Handling) Rules, 1989.

3. The petitioners are engaged in various industrial activities, such as re-rolling, pickling and/or annealing of Stainless steel sheets. They had earlier Page 2877 been granted licenses and permissions, as applicable under various laws and regulations, such as the the Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control of Pollution) Act, 1974; the Environment Protection Act, 1986 and the Hazardous Waste (Management and Handling) Rules, 1989. The Delhi Pollution Control Committee, by the impugned order, intimated that such license, permissions and authorizations were withdrawn.

4. Mr. P.S.Bindra, learned Counsel submitted that the impugned orders are unsustainable, because they were not preceded with show cause notice or reasonable opportunity. If there were any deficiencies, the respondents should have notified them and given opportunities to rectify them. Instead, they unceremoniously proceeded to withdraw the licenses and permissions, under the various Acts and regulations. Such action is violative of principles of natural justice, and the court therefore, has to interfere, in exercise of judicial review powers.

5. Mr. B.B. Gupta, learned Counsel for the Delhi Pollution Control Committee, justified the impugned orders. He submitted that the units of the petitioner were inspected. Though the petitioner was not separately notified the deficiencies existing, which amounted to violation of environmental standards prescribed by various enactments and regulations, it knew of it all times. Counsel submitted that being aware that the units were inspected, the petitioners had a duty to inform themselves about the shortcomings. Mr. Gupta also submitted that earlier inspections held on 21.10.2004 and 22.12.2004 too had revealed major deficiencies. It was contended therefore that the unit was a habitual offender. However, it was undisputed that the petitioner unit had applied and secured consent to operate. It had also applied for renewal but no formal decision has been communicated on its request. Instead the impugned order has been made refusing the consent and refusal.

6. Learned Counsel for the respondents further submitted that the question of enforcement of environmental standards is an important one and has acquired public importance. The Supreme Court had by various directions required setting of Local Area Committees, which could visit the sites and make recommendations. On the basis of information collected, the Delhi Pollution Control Committee, a statutory body created under the Environment Protection Act, determined that the cases of the petitioners, few among the 100 plus inspected by it, required to be treated immediately, calling for invocation of emergency powers. In these circumstances, prior notice or hearing was not necessary.

7. The above facts reveal that the petitioner is engaged in manufacturing activities which require environmental clearance under the Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control of Pollution) Act, 1974; the Environment Protection Act, 1986 and the Hazardous Waste (Management and Handling) Rules, 1989. Those clearances were forthcoming. The Delhi Pollution Control Committee, pursuant to inspections, said to have taken place in 2005, issued the impugned orders, resulting in closure or direction to close these industrial Page 2878 units. Indisputably, the action was not preceded by show cause or hearing to the petitioners.

8. It is well settled that every administrative or executive order, which affects or adversely impacts on the rights of an individual, should be preceded by a fair procedure, thereby implying notice, a right to represent against the proposed action and some opportunity of hearing. The content of such right would vary from situation to situation; every case may not warrant a personal hearing. (Ref Charan Lal Sahu v. Union of India etc. ; Gadde Venkateswara Rao v. Govt. of A.P. and Ors. ; Canara Bank and Ors. v. Debasis Das and Ors. . Natural justice can be

dispensed with if the injury to public interest is imminent or irreversible, if it is followed. It has been held in Liberty Oil Mills v. Union of India that the executive or public agency can seek recourse to emergency powers to prevent harm or injury to public interest wherever power exists, by making ex-parte or interim orders, interdicting the rights of individuals, pending final administrative or statutory determination.

9. In these cases, as noticed earlier, the impugned action was not preceded by any hearing. The orders are admittedly final; they are not expressed to be interim measures. It may be that the petitioner was aware of inspection carried out by the respondents; that cannot lead to a presumption that they were aware of the latter's intention to issue directions for closure. Moreover, there is admittedly a considerable time lag between the inspection, carried out in 2005 and the impugned order. This too, shows prima facie that there was no such urgency or emergency, which could be termed as 'imminent' injury to public interest if rules of natural justice were followed.

10. For the above reasons, the petition is entitled to succeed. However, instead of quashing the impugned orders, I am of the opinion, having regard to the nature of the concerns expressed by the respondents, that the impugned order, instead of being treated as directions or orders of closure, and/or withdrawal of authorizations/ cancellations of license, should be treated as a show cause notice. The petitioner shall file its reply to such show cause notice within 3 days. The respondent Delhi Pollution Control Committee shall grant minimum opportunity of hearing to the petitioner and thereafter issue speaking orders. The entire process shall be completed within three weeks. Till then, the status quo as existing in respect of the petitioner's industrial unit shall continue; it shall not be treated as a closed unit.

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11. Subject to the above directions, all rights and contentions of the parties are hereby reserved. The petition is disposed off in the above terms without any order as to costs.