In the High Court of Judicature of Andhra Pradesh at Hyderabad

The A.P. Pollution Control Board,

v.

The Appellate Authority Under Water (P&CP)
Act and Air (P&CP) Act, HUDA complex,
Maitrivanam, S.R.Nagar, Hyderabad

Writ Petition No. 33493 of 1998

28-06-2001 dd.

Sri. Satyabrata Sinha C.J.

Judgement:

1. This writ petition is filed by the of A.P. Pollution Control Board (for short 'the Board') questioning the orders dated 29-6-1998 and 26-10-1998, passed by respondent No.1 in Appeal No. 3 of 1998 and IA No. 5 of 1998.

2. The basic fact of the matter is not in dispute. The Government wide orders issued in GO Ms. No. 192, MA, dated 31-3-1994 prohibited various developments within 10 Kms radius of Himayatsagar and Osman Sagar lakes, which are the main sources of drinking water supply for Hyderabad and Secunderabad. The Government, after considering the Expert Committees recommendation made in this behalf, in modification of the aforementioned GO issued further orders in GO Ms. No. 111, MA, dated 8-3-1996. The relevant portion whereof reads:

(i) To prohibit polluting industries, major hotels, residential colonies or other establishments that generate pollution in the catchment of the lakes upto 10 Kms from full tank level of the lakes as per list in Annexure-I.

3. An application was filed by respondent No. 2 herein praying for grant of consent for establishing a Steel Re-rolling Mill. The said application was rejected by the petitioner-Board on the ground that the area in which respondent No. 2 seeks to establish the Mill, falls within the prohibited zone. Aggrieved and dissatisfied with the said order, respondent No. 2 filed an appeal before respondent No.1-appellate authority. The

appellate authority allowed the appeal stating:

Clause 3(i) of GO Ms. No. 111, dt. 8-3-1998 on the basis of which consent for establishment is refused reads as follows: "The prohibition of polluting industries, major hotels, residential colonies or other establishments that generate pollution in the catchment area of the lakes up to 10 Kms from full tank level of the lakes as per the list in Annexure I". It clearly shows that the prohibition does not apply to all villagers that are situated within a radius of 10 Kms from full water level of tanks but only to such of villages as shown in the Annexure I. Sub-clause (i) reads as follows: "there shall be total prohibition of location of industries in the prohibited zone". Prohibited zone is not defined anywhere. So what is stated in Clause (i) must be deemed to be prohibited zone. I feel that it would not be proper to read something with is not intended by the GO. So, I find that it would not be proper to read something which is not intended by the GO. So, I find that the refusal for grant of consent for establishment of the industry within the limits of that particular village where the appellant proposes to establish the industry in pursuance of GO Ms. No. 111, dt. 08-03-96 cannot be sustained. In the result the appeal is allowed and the order refusing consent for establishment is set aside.

4. The Environmental Engineer of the Board by letter dated 16-7-1998 requested the Mandal Revenue Officer, Shamshabad Mandal, to inform the Board as to why the name of the village in which respondent No. 2 intends to establish the industry was omitted in Annexure I, appended to GO Ms. No. 111, dated 8-3-1996. The Mandal Revenue Officer after conducting an enquiry, by letter dated 17-7-1998, informed the Environmental Engineer of the Board stating:

5. It is informed that the Kavvaguda village is not a revenue village and it is a hamlet of Narkoda Revenue village, Sy. No. 423 is recorded in Revenue Records of Shamshabad village and this Sy. No. is nearer to Kavvaguda h/o Narkoda village.

The petitioner, thereafter filed an interlocutory application, being IA No. 5 of 1998 before respondent No.1, praying to review the matter. The said IA was dismissed stating:

...On the other hand it was contended that the GO is applicable to all the villages within the radius of 10 Kms and as the village is situated within that prohibited zone, the appellant cannot be permitted to establish an industrial unit in the said survey number. Thus it clearly shows that it was not the mistake apparent on the face of the record. Further, this application is filed under Section 28 of Water (Prevention and Control of Pollution) Act, 1974 and Section 31 of Air (Prevention and Control of Pollution) Act, 1981. These provisions are in respect of appeals only. There are no specific provisions under which an application for review could be entertained by this appellate authority. However, review petition is based not on the material that was available at the time of hearing of the appeal but on some fresh material produced in support of fact that Kavvaguda village is only hamlet of Narkoda village. So, under the circumstances specified above, the application for review is not maintainable and is therefore dismissed.

6. The learned counsel for the petitioner submits that since a genuine mistake was

committed by the petitioner in not bringing the above fact to notice of respondent No.1 while hearing the appeal, respondent No.1 ought to have reviewed its order. The learned counsel for the petitioner further submits that in a case of this nature, though respondent No.1 was not required to exercise the power of substantive review, but when a mistake was pointed out, respondent No. 1 should have rectified such mistake in exercise of the power of procedural review.

7. Sri. O. Manohar Reddy, learned counsel for appearing on behalf of respondent No.2 on the other contended that the judgement of the Supreme Court in A.P. POLLUTION CONTROL BOARD II v. PROF. M.V. NAYUDU1 is not applicable to the case on hand inasmuch as the industry which respondent No. 2 seeks to establish is not a polluting industry, and in support of this contention, he drew our attention to the fact that the petitioner had not rejected the application of respondent No. 2 for grant of consent on the ground that it is polluting industry. The learned counsel, therefore, submits that the petitioner must be held to have failed to apply its mind properly while rejecting the application of respondent No.2 for grant of consent.

8. It is not in dispute that the aforementioned GO Ms. No. 111, dated 8-3-1996 came up for consideration before the Supreme Court in A.P. POLLUTION CONTROL BOARD II v. M.V. NAYUDU. In A.P. POLLUTION CONTROL BOARD v. PROF. M.V. NAYUDU2, the Supreme Court issued certain directions directing the authorities therein to submit a report to the Court. The reports, as directed, having been submitted, the matter again came up before the Supreme Court in A.P. POLLUTION CONTROL BOARD II v. M.V. NAYUDU3. The Supreme Court, having regard to the Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974 as amended by Act 53 of 1988 held "that no industry can be allowed to be established nor any steps can be permitted to be taken for establishing an industry without taking permission of the State Pollution Control Board".

9. In the aforementioned context, the question that falls for consideration of this Court is whether the industry sought to be set up by respondent No. 2 is a polluting industry, and whether the said industry, having regard to the promise made by the State, should be allowed to come up. The said questions, essentially being questions of fact, in our opinion, cannot be gone into by this Court in exercise of power under Article 226 of the Constitution of India.

10. Having regard to the facts and circumstances of the case, we are however, of the opinion that respondent No. 1 committed a manifest error in proceeding to determine as to whether Kavvaguda, which is said to be a hamlet Narkoda Revenue village fell within the purview of GO Ms. No. 111, dated 8-3-1996.

11. Having regard to the fact that the Government has already issued orders in GO Ms. No. 192, MA, dated 31-3-1994 prohibiting various developments within 10 Kms radius of Himayatsagar and Osman Sagar lakes, which are the main sources of drinking water supply for Hyderabad and Secunderabad, and further orders in modification of the aforementioned GO in GO Ms. No. 111, MA, dated 8-3-1996, we are of the opinion that

the question that would fall for consideration by the petitioner is as to whether the industry, sought to be set up by the petitioner is a polluting industry or not. The said question, in our opinion, cannot be gone into by this Court for the first time in exercise of power under Article 226 Constitution of India having regard to the decision of the apex Court in STATE OF W.B. v. NURUDDIN MALLICK4.

12. For the reasons aforementioned, we allow the writ petition, set aside the impugned orders dated 29-6-1998 and 26-10-1998, passed by respondent No. 1 in Appeal No. 3 of 1998 and IA No. 5 of 1998 and remit the matter to the petitioner for consideration afresh. The petitioner, having regard to the judgements of the apex Court, referred supra, and in the light of the observations made hereinabove, shall consider the question of grant of consent to the respondent No. 2 for setting up of industry, and pass appropriate orders after giving opportunity of hearing, within a period of four weeks from the date of receipt of a copy of this order. No costs.