IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1659 OF 2022

Hikal Limited ..Petitioner

vs.

State of Maharashtra & ors. ..Respondents

Mr. Janak Dwarkadas, Senior Advocate, Mr. Amit Desai, Senior Advocate a/w. Mr. Akshay Patil a/w. Mr. Jarin Doshi i/b. Malvi Ranchoddas & Co. for petitioner.

Mrs. M. P. Thakur, AGP for respondent no.1 – State.
Ms. Sharmila U. Deshmukh for respondent nos.2 to 4.

CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

DATE : FEBRUARY 21, 2022.

P.C. :

1. This writ petition is directed against an order dated February 15, 2022 issued by the Regional Officer-Navi Mumbai, of the Maharashtra Pollution Control Board (hereafter "the Board", for short). The impugned order is a 'closure' order of the petitioner's chemical factory at Taloja, district Raigad, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and under section 31A of the Air (Prevention and Control of Pollution), Act, 1981. The petitioner was granted 72 hours' time to shut activities.

2. It is not in dispute that the impugned order was preceded by a show-cause notice dated January 14, 2022

issued by the Board as well as grant of personal hearing to the petitioner on February 14, 2022. Violation of natural justice in the sense that the petitioner was denied opportunity of defence and/or hearing is not alleged. Mr. Dwarkadas, learned senior advocate for the petitioner, however, assails the impugned order on diverse other grounds.

3. Mr. Dwarkadas contends that the Board by the order under challenge has brushed aside the contentions raised by the petitioner in its response to the show-cause notice as well as those advanced in course of personal hearing by simply observing that the same were 'unsatisfactory'. Such observation, though, is followed by several findings, but the same do not contain any independent reason in support of formation of opinion that the allegations levelled against the petitioner stand established. It is further contended that non-application of mind of the decision maker is patent, which has vitiated the decision-making process. Not a single evidence produced by the petitioner has been considered by the Board. Next, he contends that the Board proceeded to pass the `closure' order with great haste without even waiting for the inquiry report of the duly constituted committee in terms of the order dated 18th January, 2022 of the National Green Tribunal, Principal bench, New Delhi (hereafter "the NGT", for short) in O.A. No.05/2022 and O.A. No.05/2022 (WZ) together with I.A. No. 8 of 2022. He also contends that shutting down the factory of the

petitioner within 3 days is practically impossible having regard to the nature of its production activities. A sudden shut down of production activities and non-disposal of the stock within such time could be detrimental to public interest and the Board at least ought to have granted 15 days' time. Accordingly, it is prayed that the order under challenge be stayed.

4. Ms. Sharmila Deshmukh, learned advocate appearing for the Board raises a preliminary objection to the maintainability of the writ petition. According to her, an incident of gas leak from a tanker in Surat, Gujarat led to the death of 6 people and 23 others suffering injuries. The NGT took *suo motu* cognizance and the petitioner's involvement can be gathered upon reading of the order passed by the NGT on 18th January, 2022. If at all the petitioner is aggrieved by the closure order dated February 15, 2022, it is her submission that the petitioner ought to move the NGT for relief having regard to the terms of the order dated 18th January, 2022 passed by it. On merits, she submits that the petitioner was granted opportunity to respond to the allegation levelled against it and was also heard, whereupon the order under challenge came to be made. It being an appropriate order in the circumstances, she submits that no interference is warranted.

5. We have heard the parties. It is proposed to dispose of the writ petition at the admission stage, since a reply-affidavit cannot improve the case of the Board.

6. Law is well-settled that a writ Court does not sit in appeal over a decision made by a statutory authority; however, the Court would be justified in examining whether the process leading to the impugned decision stands vitiated by any illegality or procedural impropriety or irrationality. If any of these vices is found to exist, such decision could be invalidated.

7. The order under challenge is spread over 11 unnumbered paragraphs. In paragraph 4, the Board has recorded that the replies/contentions of the petitioner were 'unsatisfactory'. Thereafter, the Board found the petitioner to be guilty of four specific violations, which are recorded in paragraphs 5 to 8. Paragraph 10 directs `closure' and the last paragraph records that the order is issued with the competent authority's approval.

8. Insofar as the first violation dealt with at paragraph 5 is concerned, we find that the petitioner, despite having admitted production of 'Fenamidone' in excess of the quantity permitted by the "Consent to Operate" issued by the Board, had put forward an explanation in its response. This explanation, we presume, was not accepted on the ground of being 'unsatisfactory', as recorded in paragraph 4 of the order under challenge. We shall advert to this aspect of the violation a little later.

9. Paragraphs 6 and 7 recording the Board's conclusions that the relevant allegations levelled against the petitioner

were proved and that the petitioner has violated the terms of Condition Nos. 13 and 14 of the 'Consent to Operate' do not, however, show either application of mind to the evidence produced by the petitioner, to which our attention has been invited by Mr. Dwarkadas, or any reason for discarding such evidence as irrelevant. Non-consideration of the documentary evidence by the Board leads us to form the opinion that the procedure adopted was flawed and the resultant order is perverse.

10. Also, the order under challenge (except paragraph 5) stands vitiated because of the Board's failure to assign reasons and, thus, do not bear the fundamentals of an order visiting any party with civil consequences.

11. Moving forward, we find that the finding at paragraph 8 too suffers from a brazen illegality. The petitioner has been found guilty of violation of certain requirements contained in the 'Consent to Operate' without such allegation being levelled in the show-cause notice. The petitioner was not called upon to meet this particular allegation and this has not been disputed by Ms. Deshmukh. It is, therefore, clear that a finding in respect of an act of omission/commission was returned although the petitioner had no opportunity to meet it. Accordingly, such finding cannot be pressed into service to the detriment of the petitioner.

12. We are conscious that the proceedings initiated by the Board against the petitioner have been triggered because of the unfortunate incident, which the NGT is seized of. From one of the applications before the NGT, the name of the petitioner transpired; yet, the NGT was of the view that the matter ought to be further verified. The NGT constituted a committee with terms of reference including, *inter alia*, for fixing responsibility. There can be no two opinions that precious lives having been lost for no fault of the deceased and near about two dozen of individuals having suffered injuries, those who are responsible for such unfortunate deaths and injuries must be adequately punished in accordance with law. However, at the same time, a Court of law cannot be blind and ignore non-adherence to due procedure prescribed by law for the purpose of taking punitive action. The duty that the law enjoins has to be scrupulously followed. The oft-quoted words of Frankfurter, J. in **Vitarelli vs. Seaton**[1] are worth recalling:

> ". . .if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed…. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

The aforesaid dictum has been approved by the Supreme Court in number of decisions. We may only refer to the Constitution Bench decision in **Ramana Dayaram Shetty**

[1] 359 US 535

vs. The Intentional Airport Authority of India and others[2]**.**

13. The submission of Ms. Deshmukh that the petitioner ought to move the NGT does not appear to be well-founded. The order of closure, in its entirety, cannot be carried in appeal before the NGT in view of the provisions of section 16 of the National Green Tribunal Act, 2010. No appeal is available against an order under the Air Act. Mr. Dwarkadas is right that the NGT cannot confer jurisdiction upon itself, which the statute does not confer.

14. Having found that three of the four findings of violation are susceptible to interference for the reasons assigned above, we now revert to the first finding of violation returned by the Board in paragraph 5 of its order. That the petitioner produced `Fenamidone' in excess of the quantity permitted by the 'Consent to Operate', has been admitted by the petitioner. The order under challenge is the result of the cumulative effect of four violations allegedly committed by the petitioner. The findings in respect of three of the violations being unsustainable in law, whether violation of only one particular term of the 'Consent to Operate' automatically can lead to the harshest order of 'closure' being passed is a matter which, we are inclined to think, needs to be considered by the Board particularly when the explanation proffered by the petitioner, for whatever it is worth, is not rejected by a reasoned order.

2 AIR 1979 SC 1628

15. This being pointed out to Ms. Deshmukh, she has obtained instructions from the officers of the Board present in Court. Ms. Deshmukh has informed us that the Board is willing to give fresh personal hearing to the petitioner based on the allegations leveled in the show-cause notice dated January 14, 2022.

16. In such view of the matter as well as for the reasons assigned above, we are of the considered opinion that the order of 'closure' dated February 15, 2022 is indefensible and cannot be sustained in law. The same stands set aside.

17. The Board is directed to grant fresh personal hearing to the petitioner. To obviate any further delay in the matter, we direct the Board to offer such hearing to the petitioner on Tuesday week (March 1, 2022), at 12.30 p.m. No further notice need be served on the petitioner.

18. The Board may proceed to pass an appropriate reasoned order after considering all the contentions raised by the petitioner in course of the personal hearing and/or in a written note of argument that may be filed.

19. The Board is also directed to bear in mind the contents of sub-para (xxii) of paragraph 3 of the writ petition while passing the final order.

20. All contentions are left open.

21. The writ petition is disposed of. No costs.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**