

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

M.A. No. 126/2019

In

Original Application No. 895/2018

Anil M. Puri & Ors.

Applicant(s)

Versus

State of Uttarakhand & Ors.

Respondent(s)

Date of hearing: 15.05.2019

CORAM:

**HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

For Applicant(s)

Mr. V.K. Shukla, Advocate

For Respondent(s)

Mr. Mukesh Verma, Advocate for
UEPPCB and Mr. S.P. Subudhi,
Member Secretary, UEPPCB

Mr. Rahul Verma, AAG for State
of Uttarakhand

Mr. Sanjay Upadhyay, Mr.
Vibhav Misra and Mr.
Sarmitra Jaiswal, Advocates in
M.A. No. 126/2019

ORDER

M.A. No. 126/2019

Heard the learned counsel for the parties.

2. In compliance of our earlier order, the Member Secretary, Uttarkhand Environment, Protection and Pollution Control Board is before us. This application has been filed by applicant Chandan Singh Manral with the prayer that direction be issued to UEPPCB to decide the application dated 04.04.2019, for consent to establish on merits, after considering the submissions and material placed on record. Further, it is prayed that the Board be directed to pass a reasoned and speaking order as per the order of Tribunal dated 08.02.2019 and 15.03.2019.

3. At the outset, we may mention the facts to show the development which had taken place in the intervening period. The original application filed by the applicant (895/2018) for decided by the Tribunal on 08.02.2019 with the following conclusion:

“We direct the State Pollution Control Board to decide the application pending before it, in accordance with within a period of two weeks. The Pollution Control Board shall considered submissions which may be advanced by both the parties and also consider the relevant documents placed before it.”

4. Thereafter, on 21.02.2019, the Pollution Control Board passed order as under:-

Specific reasons:

“As per the comment of RO, Haldwani and reference to order of Hon’ble High Court, Nanital dated 27.08.2018 in the matter of Milakh Raj Vs. State of Uttarakhand and in reference to the order of Hon’ble NGT dated 08.02.2019, the application of CTE is rejected.

Your application be reconsidered only after compliance above reasons.”

5. Coming to the proceedings before the High Court of Uttarakhand it may be mentioned that a PIL in the name of *Milakh Raj Vs. State of Uttarakhand* (107/2018) was filed before the Division Bench. In the said case vide order dated 27.08.2018, the Hon’ble High Court passed the following order:

“Accordingly, till further orders of this Court, without assessing the carrying capacity of rivers Kosi and Dabka, no further license shall be issued for establishment of stone crushers/screening plants in Tehsils Bazpur, Kashipur and Ramnagar. The State Government is also directed to file a supplementary affidavit about the existing carrying

capacity of two rivers for the purpose of extraction of RBM within a period of two weeks from today.”

6. Thereafter in the case of *A.B. Construction and another Vs. State of Uttarakhand and others* (W.P. No. 568 (MS)/2019) an order came to be passed on 11.03.2019 with reference to the policy regarding Uttarakhand Stone Crusher, Screening Plant, Mobile Stone Crusher, Mobile Screening Plant, Hotmix Plant, Ready Mix Plant License Policy 2016. The Hon'ble High Court decided the writ petition as under:

“Accordingly, both the writ petitions are allowed. Pollution Control Board is directed to grant consent to establish and operate the screening plant, in accordance with law, if petitioners are otherwise entitled and District Magistrate, Nainital is directed to take decision for granting permission for storage of mineral and Regional Officer, Uttarakhand Environment Protection, in accordance with law.”

7. Another proceeding before the High Court came up by way of special appeal (281/2019 and 284/2019). The said appeals were filed by Milakh Raj (supra). The learned Division Bench while passing the order on 09.04.2019, in Para 10, ordered *“we consider it appropriate, therefore, to grant interim stay as prayed for.”*

Further, Hon'ble Court observed in Para 11:

“11. Since the issue in this writ petition is related to the environment and ecology in and around the two rivers Kosi and Dabka. It is but appropriate that these special appeals are heard together, alongwith Writ Petition (PIL) No. 107 of 2018.”

The Hon'ble Court had ordered that the said appeals be posted along with Writ Petition (PIL) No. 107 of 2018.

8. Reverting to the order dated 21.02.2019 passed by the Member Secretary, Uttarakhand Environment, Protection and Pollution Control Board, it is apparent that specific reasons while considering the application for CTE have been given. Firstly, as per comment of RO, Haldwani with reference to the order of Hon'ble High Court of Nainital dated 27.08.2018 in the matter of *Milakh Raj Vs. State of Uttarakhand*. Secondly, in the reference to the order of NGT dated 08.02.2019.

9. As mentioned above a Division Bench of Hon'ble High Court had passed the order in PIL No. 107/2018 but thereafter Special appeals were filed by Milakh Raj himself (218/2019 and 284/2019). While considering the submissions of the applicant in the Special appeals, on application for leave to appeal, the Hon'ble Division Bench had granted interim stay order as prayed for. In other words the order passed on 11.03.2019 in writ petition no. 568/2019 and 569/2019 had been stayed.

10. So far as order of NGT dated 08.02.2019 is concerned, it may be reiterated, as quoted above, directions were that the Pollution Control Board shall decide the application pending before it, in accordance with law within a period of two weeks. The said order passed by the Tribunal was never in reference to merits while deciding the application pending before Court. Therefore by no stretch of imagination the specific reason given by the board for

rejecting the application of the applicant for consent to establish, could have been the order of NGT dated 08.02.2019 as its basis. It was incumbent on the board to have decided the application within two weeks, in accordance with law. Meaning thereby if the Pollution Control Board was of the view that the application of the applicant deserve to be rejected then they ought to have given reasons in accordance to law. To say that the rejection has been passed in reference to the order of the Tribunal dated 08.02.2019 is clearly a case of total non-application of mind and perverse to the directions given by the Tribunal on 08.02.2019.

The Member Secretary present before us has sought to explain that the order of 27.02.2019 was not a final one. The very fact that apart from the specific reason given therein the said order also directs that your application will be reconsidered only after compliance of the above reasons. Further, the very fact that the order of 21.02.2019 in essence, is complete in itself, therefore, no order was required to be passed by Pollution Control Board subsequently. In face of the nature of order passed on 27.02.2019 it cannot be said to be a final order. It appears that it was on account of an afterthought.

The petitions which are pending, the Hon'ble High Court of Uttarakhand has already passed an interim order by which stone crusher was allowed to be established. The

said petition has been ordered to be tagged with another similar petition and all petitions are yet to be decided.

In such a situation, we deem it just and proper to order that any CTE and CTO if already granted to any party in the area of river Kosi and Dabka in Bazpur, Kashipur and Ram Nagar shall remain suspended. As already mentioned in the order of 21.02.2019 the application filed by the applicant will be reconsidered after the issue is decided by the Hon'ble High Court.

Accordingly, M.A. No. 126/2019 stands disposed of, with no order as to cost.

Raghuvendra S. Rathore, JM

Dr. Satyawan Singh Garbyal, EM

May 15, 2019
MN

