

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

**Original Application No. 230/2013**

**Vijay Kumar Vs. State of Punjab & Ors.**

**CORAM:** HON'BLE MR. JUSTICE DR. P. JYOTHIMANI, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER  
HON'BLE DR. G.K. PANDEY, EXPERT MEMBER  
HON'BLE PROF. (DR.) P.C. MISHRA, EXPERT MEMBER  
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER

**Present:** Applicant / Appellant : Mr. Balram Singh, Adv.  
Respondent No.3 : Mr. Shubham Bhalla, Advocate  
Respondent No.5 : Mr. Sumit Ghosh, Adv. for Mr. A. R. Takkar  
Adv.  
Respondent No. 6 : Mr. Rohit Bhardwaj with Ms. Geeta Luthra,  
Adv.

| <b>Date and Remarks</b>                                      | <b>Orders of the Tribunal</b>  |
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| <p><b>Item Nos. 3</b><br/><b>March 4, 2014</b></p> <p>DV</p> | <p>We have heard learned Counsel appearing for the Applicant as well as the Respondents.</p> <p>The issue involved in this case is as to whether the respondent no. 5 (Project Proponent) is falling under red category as on date. It is not in dispute that it was categorised as green industry since it was carrying on business in assembling of Diesel Engines. Learned Counsel appearing for the PPCB, on instruction, would submit that the respondent no. 5 falls under red category. Even otherwise, learned Counsel appearing for the Punjab Pollution Control Board (PPCB) would also submit that the application of the respondent no. 5 for consent to operate is pending with them. If so, it is not certainly open to the respondent no. 5 to say that they do not require any consent to operate from the PPCB for the purpose of running the unit.</p> <p>After the unit was declared as green category, ten years of time was granted to shift which has not been done. Inasmuch as on the face of the record it is clear that in view of the fact that the respondent no. 5 has been running as green category and the permission granted for ten years to shift the unit has been availed</p> |

and therefore it is to be treated as red category unit. On admitted factual position, we are fully satisfied that the unit cannot be permitted to run unless and until the PPCB grants its consent to operate. In such view of the matter, we direct the respondent no. 5 not to run the unit till the PPCB gives its order of consent to operate.

We make it clear that the PPCB shall decide about the application made by the respondent no. 5 within a period of ten days from today. We also make it clear that in the event of PPCB passing order to grant consent to the respondent no. 5 then it will be open to the respondent no. 5 to operate the plant. On the other hand, in the event of the PPCB rejecting the application for consent to operate, the respondent no. 5 shall not carry on any activity till the PPCB passes further orders. With this above directions, the application stands closed.

We also make it clear that if respondent no. 5 is aggrieved against the order of PPCB, it will be open to the said respondent to work-out its remedy in the manner known to law.

Learned Counsel appearing for the respondent no. 5 has made submission that more than 100 units are running even without applying for consent to operate and the same are in the residential zone. We make it clear that if any similar industries are carrying on activities without consent to operate, PPCB shall also take immediate steps to close down those units, after following the procedure.

As per the reports submitted by the PPCB, in so far as, it relates to the respondent no. 5, we are not able to see any enormous environmental hazards but still it cannot be permitted to operate without the order of consent to operate from the PPCB.

In view of such circumstances, we do not want to express any opinion about this unit in respect of its environmental norms.

Needless to say that if permission is granted by the PPCB, the unit shall be entitled to operate only if the norms are fulfilled in full sense.

We make it clear that the PPCB shall ensure that the respondent no. 5 is closed immediately and it is permitted to open only after proper consent to operate is granted by the PPCB.

On the facts and circumstances of the case and on the admitted facts, this unit has been running for quite a long time without consent to operate. This being the red category as stated by the learned Counsel appearing for the PPCB, we are of view that the industry which has already caused pollution ought to have been made liable in accordance with law on polluter pay principles. Accordingly, we would have awarded compensation against the respondent no. 5 on the said polluter pay principle. However, taking note of the fact that this unit has been permitted by the PPCB and the PPCB is keeping application of the respondent no. 5 pending for some time we refrain from passing such orders of awarding any compensation in this case.

With the above observation, the application stands closed.

....., JM  
(Dr. P. Jyothimani)

....., JM  
(M.S. Nambiar)

....., EM  
(Dr. G.K. Pandey)

....., EM  
(Prof. (Dr.) P.C. Mishra)

....., EM  
(Ranjan Chatterjee)