

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

**M.A. No. 424 of 2014
In
Appeal No. 50 of 2014**

M/s Vishivkarma Bikes Vs. P.P.C.B. & Ors.

CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER
HON'BLE MR. DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER
HON'BLE DR. R.C. TRIVEDI, EXPERT MEMBER

Present: Applicant: Mr. A.R. Takkar, Adv.
Respondents: Ms. Richa Kapoor, Adv.

Date and Remarks	Orders of the Tribunal
Item No. 1 July 8, 2014	<p>We have heard the learned Counsel appearing for the parties at some length.</p> <p>Respondent No. 4 has not been served. None is present on his behalf.</p> <p>Learned Counsel appearing for the Respondent Nos. 1 to 3 has contended that the Board had passed the order dated 3rd July, 2014 issuing directions under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, giving certain directions to the industries as well as directing him not to start any process and that electricity supply to the premises of the Applicant be disconnected. According to her the officers of the Board were of the opinion that it is not expedient to provide even an opportunity to file objections or granting hearing to the Applicant as Applicant was running a seriously polluting industry. It is the case of the Board that the consent was granted to the industry to operate which was valid till March, 2014. The Industry has changed the process from phosphating to electroplating as well as changed the product. It had applied for obtaining the consent of the Board which had not been granted and vide order dated 8th July, 2014 the consent has even been refused for the original as well as new activity.</p> <p>According to the Learned Counsel appearing for the Applicant the entire action is result of personal vendetta against the Applicant as he is the President of the</p>

Association.

According to the media reports the Ruling Party candidate has lost election and it was reported that the association is responsible for his defeat. Resultantly, the action has been taken in the most arbitrary and discriminatory manner.

It is further contention of the Applicant that the premises of the Applicant were visited on various occasions, including on 18th June, 2014 wherein all facts were brought to the notice of the inspecting team, and the inspecting team after visiting on 10th May, 2014, 12th May, 2014, 15th May, 2014 and 26th May, 2014 had after personal hearing, passed the following directions:

“After hearing the officers of the Board and the representative of the industry, it was decided that:-

- 1 The industry shall self audit the volume of effluent generated on hourly basis by dip method for 7 days as well as the fresh water used in the process.*
- 2 Regional Office shall re-audit the industry after 7 days and submit its report, within 15 days along with recommendations to decide the consent application of the industry.*

You are, therefore, requested to comply with the decisions of the personal hearing within the stipulated period and submit compliance report of the Board”.

Despite above no inspection or visit was made by the Officer of the Board and suddenly on 3rd July, 2014 the impugned order issuing directions under Section 33A of the Water Act was passed in violation of the Principle of Natural Justice and arbitration.

Further it is pointed out by the Applicant that the tanker which is mentioned in the impugned order was carrying sewage and not electroplating trade effluent. However, an incorrect report has been produced before the Tribunal.

We have heard the Learned Counsel appearing for the parties at some length.

We are of the considered view that it is not a fit case where the principle of *audi altrem partem* could be avoided. The Board appears to have acted in an undue manner as far as the analysis report produced by the Learned Counsel appearing for the Board during the course of hearing is concerned that certainly shows highly toxic effluent being discharged. The question that has to be examined and decided is whether that effluent in the tanker is from the industry of the Applicant or it is a planted sample. It is conceded before us by the Learned Counsel appearing for the Board that they have not kept the second sample in terms of the requirement of Section 21 of the Water Act. Thus, these would have to await the final hearing of the matter. It is further undisputed that the industry was operating without causing pollution till March, 2014 and the Board admittedly took no steps to close the industry on the ground that it was causing pollution or was operating without consent of the Board. What exactly transpired between 26th June, 2014 to 3rd July, 2014 has been left to the imagination of anyone?

We are required to take a balanced view. The industry cannot be permitted to pollute but at the same time it also not ought to be closed except in accordance with law and by an action which does not smack arbitrariness or discrimination.

According to the Applicant he has been singled out by the Board and that there are hundreds of electroplating units in the District of Ludhiana, none of them have been issued notice for closure as of now.

Be that as it may. This is not a stage where we can finally comment upon the rivalry contentions raised before us suffice it to note that there should be a proper scientifically collected evidence before the Tribunal to enable us to pass appropriate orders in the interest of environment or otherwise. While granting liberty to the Learned Counsel appearing for the Respondents to file a complete Reply along with the requisite analysis report

and documents. Let Reply be filed within one week from today with advance copy to the Learned Counsel appearing for the Applicant who may file Rejoinder thereto, within three days thereafter.

In the meanwhile we issue the following directions:

- a) For immediate compliance we direct the team of the following to visit the industry and report to the Tribunal *inter-alia* but importantly on the aspects stated in this order.

Constitution of Committee:-

- i) A senior Environmental Engineer from the Central Pollution Control Board;
- ii) Senior Environmental Engineer from the Punjab Pollution Control Board excluding the Officer who have so far been involved in this case;
- iii) Nominee Professor of Environmental Sciences from the Guru Nanak University name to be nominated by the Vice-chancellor of that University;

The Committee shall visit the industry within one week from today. The Industry shall commence its entire manufacturing activities including electroplating from Thursday i.e. 10th July, 2014 for the period of one week including weekend.

The industry shall operate at its optimum capacity which shall be noticed by the visiting Committee.

The visiting Committee shall collect samples of the electroplating effluent which shall be separately stored by the industry.

The Committee shall also report as to the complete functioning and operation of the unit including the electroplating units in terms of quantity, quantum and optimum capacity.

The Committee shall also state as to the water consumption of the industry and the total discharge for that week and the quantity of stored effluent.

The Committee shall also report, if bathrooms are under construction or have been recently constructed and sewage tank/septic tank of the industry is empty or not.

The Samples from the septic tank shall also be taken.

The analysis report of both the samples shall be placed before the Tribunal. The entire expenses of the Committee shall be borne by the Applicant at the first instance subject to further orders.

After the period of one week the industry shall not carry on any activity without order of the Tribunal.

List the matter for further directions and arguments on 22nd July, 2014.

In the meanwhile, we direct the Applicant to place on record the proof of last collection of electroplating/effluent discharge by the Applicant as well as the last lifting of the sewage as prayed by the Applicant.

.....,CP
(Swatanter Kumar)

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

.....,EM
(Dr. D.K. Agrawal)

.....,EM
(Prof. A.R. Yousuf)

.....,EM
(Dr. R.C. Trivedi)