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MAHARASHTRA POLLUTION CONTROL BOARD

Ph.No.24010437/24020781

Web Site :- www.mpcb.mah.nic.in
BY RPAD/Fax/ Hand Delivery
BO/ P & L Division/B 2497

Policy and Law Division

Kalpataru Point, 2nd, 3rd & 4th Floor,
Near Sion Circle, Sion (East)
Mumbai-400 022.

Date - 03/10/11

To

✓ The Regional Officer
Maharashtra Pollution Control Board
Mumbai / Navi Mumbai/ Raigad/ Aurangabad/ Kolhapur
Amravti/ Kalyan/ Thane/ Nashik/ Pune/ Nagpur/Chandrapur

Sub - Hon'ble High Court Orders in the following matters

- 1) WP NO 8717 of 2010 filed by
Imrankhan Iqbal Khan Qureshi
and others V/s state of Maharashtra and Others
- 2) Writ Petition No 2097 of 2010
Nadim Khan Suleman Khan Qureshi V/s State of Maharashtra
and Others

Shri Nadim Khan Suleman Khan Qureshi had filed aforesaid petition No 2097 of 2010 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad, aggrieved by the order dated 5/11/2009 and on 26th Oct 2009 the Board Direction issued 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 for closing down their slaughter house. The Petitioner's main contention was that the Board has not extended opportunity of hearing before issuing such directions and denied natural justice.

The matter was heard at length taking note of earlier petitions (PIL NO 75 of 2009/162 of 2009 and 95 of 2009) and directed the Board to extend personal hearing to the Occupier of the Slaughter House alongwith the Commissioner /Chief Officer as the case may in accordance with the Law before issuing closure Direction.

The identical matter was again filed bearing No 8717 of 2010 before the Hon'ble High Court of judicature at Bombay Bench at Aurangabad wherein the petition was allowed as per the order dated 30/6/2010. Copies of the said orders dated 30/6/2010 and 26/10/2010 are enclosed for your ready reference. You are therefore requested to henceforth before taking action against slaughter house/s necessary opportunity of hearing be extended in compliance of the above order passed by the Hon'ble High Court and then to issue appropriate final directions.

D. T. Devale
(D T Devale)
Sr Law Officer

Encl - as above.

Copy f.w.cs to - WPAE/APAE/ Regional Officer (PAMS Division)/Regional Officer (HQ)/
PSO/ Regional Officer (P & P)/ Asstt Secretary (Technical)

Copy to -

- 1) Law Officer/ Asstt Law Officer, MPCB, Mumbai- for information and necessary action.
- 2) Asstt System officer - for information and necessary action - He is requested to hoist the Hon'ble High Court Orders on the website of the Board (Link - Important High Court Orders)

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8717/2010

Imrankhan Iqbal Khan Qureshi and Ors. .. PETITIONERS

VERSUS

The State of Maharashtra & ors .. RESPONDENTS

.....

Shri Javed R. Shaikh, Advocate for petitioner
Shri K.M.Suryawanshi, A.G.P. for respondent No.1
Smt. Sarika Deshpande, Adv. for R.2 and 3.
Shri R.N.Dhorde, Adv. for R.4.

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**CORAM : B.R.GAVAI &
A.A.SAYED, JJ.**

DATE : 26/10/2010

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PER COURT :

1] Rule. Rule made returnable forthwith. By consent,
Petition is heard finally.

2] The petitioner challenges the order dated 26/10/2009
issued by respondent no.2 and the order dated 3/11/2009

issued by respondent no.3.

3] The Division Bench of this Court in Writ Petition No. 2097/10 had an occasion to consider identical matters. Petition was allowed vide order dated 30/6/2010.

4] It is the contention of the petitioners that the procedure which is prescribed under the Water (Prevention & Control of Pollution) Act, 1974 & Water (Prevention & Control of Pollution) Act, 1981 and Water (Prevention & Control of Pollution) Rules is that unless a copy of the proposed directions are issued and an opportunity of being heard is given, the orders of the nature impugned in the present petition cannot be passed. The learned counsel for the respondent no.1 in this respect has attempted to place reliance on the communication issued by it to the municipal council. The contention which is raised before this Court now therefore also sought to be raised earlier in Writ Petition No.2097/10. However, this Court vide judgment and order dated 30/6/2010 viewed that since no prior notice was given to the petitioners therein before the impugned order was passed, same was not sustainable.

5] In that view of the matter, present Petition also will have to be allowed. Rule is made absolute in terms of prayer clause "A". Needless to state that the order passed by this Court would not come in the way of respondent authority in taking steps as permissible and in accordance with law.

[A.A.SAYED]
JUDGE

[B.R.GAVAI]
JUDGE

umg/wp8717-10

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO.2097 OF 2010

1. Nadim Khan Suleman Khan Qureshi,
Age 32 years, Occ. Butcher,
2. Abdul Aziz Abdul Shakur Qureshi,
Age 30 years, Occ. Butcher,
3. Nawazkhan Gaffarkhan Qureshi,
Age 55 years, Occ. Butcher,
4. Mohd. Taher Mohd. Umar Qureshi,
Age 58 years, Occ. Butcher,
5. Sabir Shaikh Musa Qureshi,
Age 58 years, Occ. Butcher,
6. Munafkhan Wahabkhan Qureshi,
Age 65 years, Occ. Butcher,
7. Hasankhan Gulabkhan Qureshi,
Age 46 years, Occ. Butcher,
8. Chandkhan Ahmedkhan Qureshi,
Age 41 years, Occ. Butcher,
9. Majeedkhan Ibrahimkhan Qureshi,
Age 80 years, Occ. Butcher,
10. Yunus Khan Taj Khan,
Age 69 years, Occ. .Butcher.

All r/o Quresh Mohalla, Amalner,
Tq. Amalner, District Jalgaon.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
through Secretary,
Environmental Department,
Mantralaya, Mumbai – 400 032.

(Copy to be served on the
Government Pleader, High Court of
Judicature of Bombay,
Bench at Aurangabad).

2. Maharashtra Pollution Control Board,
Regional Office,
Udyog Bhavan, 1st Floor,
Trimbak Road, M.I.D.C. Compound,
Near I.T.I., Satpur, Nasik – 422 007

3. A.S. Fusle,
Age major, Occ. Service,
Regional Office, Nasik,
Udyog Bhavan, 1st Floor,
Trimbak Road, M.I.D.C. Compound,
Near I.T.I., Satpur, Nasik – 422 007

4. Municipal Council, Amalner,
through Chief Executive Officer,
District Jalgaon,
through Chief Executive Officer ... RESPONDENTS

Shri J.R. Shaikh, Advocate for the petitioner
Shri S.K. Tambe, A.G.P. for respondent No.1.
Mrs. Sarika Deshpande, Advocate for respondent Nos.2 & 3
Shri Girish Rane, Advocate for respondent No.4.

CORAM : P.V. HARDAS AND
N.D. DESHPANDE, JJ.

DATED : 30th June, 2010.

Date of reserving judgment : 7th June, 2010.
Date of pronouncing judgment : 30th June, 2010

JUDGMENT (PER N.D. DESHPANDE, J.):

1. Rule. Rule made returnable forthwith. With the consent of parties, heard finally at the stage of admission.

2. Heard both the sides. The petitioners, by this petition, seek to challenge order dated 26.10.2009 of respondent No.2 and also an order dated 5.11.2009 of respondent No.4 Municipal Council, Amalner, District Jalgaon. Both the orders are impugned in this petition for issuance of writ of mandamus, challenging the closure of the slaughter house belonging to the petitioners.

3. The material facts briefly stated in the petition are as under :

All 10 petitioners, who are butchers by profession, have jointly filed this petition, since aggrieved by the impugned order dated 5.11.2009 (Exhibit C), issued by respondent No.4 for closing down their slaughter house and its sealing pursuant to the order dated 26.10.2009 issued by respondent Nos.2 and 3 under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 31-A of the Air (Prevention and Control of

Pollution) Act, 1981 with reference to certain correspondence pointing out about non compliances and having failed in its statutory obligations.

4. The main contention of the petitioners is that since 1942 they were carrying on their business, namely, slaughter house for their livelihood as of right till recently and the same was closed down suddenly by the impugned notice of respondent No.4 without affording hearing. They were not served with notice or any intimation as required and thus, their valuable rights have been defeated. Principles of natural justice and due procedure were not followed before impugned order of closure of slaughter house has been passed by the respondent, which is a clear violation of their valuable right to livelihood.

5. The petition has been filed recently in February 2010, after the impugned notice dated 5.11.2009 was served on the petitioners, communicating the order of respondent No.4 and closing down the slaughter house. Admittedly, the action was taken at the behest of respondent No.2 and with regard to the decision of this Court in Public Interest Litigation Nos.75/2009 and 95/2009 to the knowledge of the petitioners under the Right to

Information Act and the relevant information they sought from the respondent No.2. Thus, it is seen that, the main grievance in the petition is made against the respondent No.4 for closing down the slaughter house of the petitioners, who are admittedly lessees or contractors of the mutton, beef and slaughter house of respondent No.4. The petitioners also quoted the order of this Court in Public Interest Litigation and also the relevant provisions of Section 25 of Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, referring to a consent to be obtained before establishing or taking steps to establish an industry, and further submitted that when it applies to Amalner Slaughter House, it was incumbent on respondent No.2 to issue notice to petitioners who were using the slaughter house outlet and were making discharge. Thus, according to the petitioners, the respondent No.2 was required by law to issue notice notice saddling/ imposing all the conditions that it thought fit and under Section 25. There is no provision of closure of slaughter house. In fact, the very applicability of Section 25 to the slaughter house is in question and, therefore, the impugned action of respondent No.3 and respondent No.4 being without jurisdiction and violating the fundamental right of the petitioners and not in accordance with the principles of natural justice. The

petitioners urged that, if an Act provides a particular thing to be done in a particular manner, then it has to be done only in that manner, otherwise not. As such, the Pollution Control Board is not empowered to close the slaughter house under the pretext of violation of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974.

6. The petitioners also urged that the impugned order is not justified even under the provision of Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 and Rule 34 thereunder. Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 reads as under :

“33-A. Power to give directions-- Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.”

7. On behalf of respondent Nos.2 and 3, affidavit-in-reply came to be filed to the effect that, petitioners, who are butchers by

profession, and working under the control of Amalner Municipal Council. They have not applied for any statutory consent from the respondent Nos.2 and 3 and they are not having any adequate and suitable treatment and disposal arrangements as well as solid waste management and have no locus standi to file the present petition. As such, they have no right to carry on their business deteriorating the quality of the environment. It also referred to Public Interest Litigation (Writ Petition No.75/2009) along with other two Public Interest Litigations bearing Writ Petition Nos.95/2009 and 162/2009 pending before the High Court of Judicature at Bombay and pointed out that this Court is monitoring the implementation of the pollution control norms by various slaughter houses including Amalner Municipal Council's slaughter house and as such, the present petition cannot be entertained, and urged to tag the same with Public Interest Litigation. The respondent – Board reiterated that it has followed the due procedure of law while initiating the action against the defaulting slaughter houses including the present respondent No.4 and insisted for its implementation of the relevant law and enforcement of the order passed by the High Court. The action is taken in exercise of its power to protect the environment.

8. A separate affidavit-in-reply came to be filed on behalf of respondent No.4. The respondent No.4 justified the action of closure of the slaughter house being correct and legal. It is the duty of the Municipal Council to provide slaughter house as per the provisions of Maharashtra Municipalities Act and the impugned action is based upon the directives issued by respondent Nos.2 and 3. It is stated that, the slaughter house is very old and not suitable for the use and hence the process of constructing the new slaughter house is initiated and in furtherance thereof, appropriate resolution is also passed by the Municipal Council. The respondent No.4 also referred to the order of this Court passed in Public Interest Litigation. It also stated that the slaughter house in question at Amalner since long is run without any adequate pollution control measures such as scientific method/treatment for disposal of sewage and water and disposal of waste generated from slaughter house scientifically and hence, the Municipal Council has rightly passed the impugned order dated 5.11.2009 pursuant to the direction dated 26.10.2009 passed by respondent Nos.2 and 3 and obeyed the order passed by the High Court. The respondent No.4 further stated that, the petitioners are running their business on certain terms and conditions of licences/ agreement and they have, therefore, no absolute right to carry on

their business as alleged. A copy of three year licence agreement (Years 2008 to 2011) is also placed on record to substantiate the contention.

9. It is undisputed that, before the impugned notice/ order dated 5.11.2009 of closure of slaughter house, respondent No.4 had not issued any notice of hearing to the petitioners and, therefore, the petitioners placed their reliance on AIR 1952 SUPREME COURT 16(1) in the case of Commissioner of Police, Bombay – Appellants Vs. Gordhandas Bhanji – Respondent in order to impugn the action of the respondents, who have failed to issue notice to the occupants of the slaughter house. The case in AIR 1978 SUPREME COURT 851(1) in Mohinder Singh Gill and another, Appellants Vs. The Chief Election Commissioner, New Delhi and others, Respondents was also referred, in which it is held in paragraph No.8 as under :

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time

it comes to court on account of a challenge, get validated by additional grounds later brought out.”

10. The petitioners urged the above point as they challenged the impugned action at the outset for non issuance of notice. The matter was heard mostly on this ground. On merits it was stated that, remedial measures would be taken in due course. It is seen that, Board has given notice dated 5.5.2007 to Municipal Council under Rule 34(3) of Water (Prevention and Control of Pollution) Rules. However, no copy of the proposed action was served or given to the occupants/ petitioners and there was no challenge by the Municipal Council.

11. It is seen that, the prejudice has been caused to the petitioners. Thus, in facts and circumstances of the case, the petitioners would be entitled to prior notice before the impugned order of closure of slaughter house came to be passed by respondent No.4 and as such, the impugned order dated 5.11.2009 of respondent No.4 cannot be sustained in law. The petition, to that extent, deserves to be allowed and impugned orders are quashed and set aside. The respondents are at liberty to issue notice to the petitioners and hear them in accordance with law and

pass orders in accordance with law. In the circumstances, there will be no order as to costs. Rule made absolute on the above terms.

[N.D. DESHPANDE, J.]

[P.V. HARDAS, J.]

Bombay High Court