

Jharkhand High Court

Dlf Power Ltd. vs State Of Jharkhand And Ors. on 18 June, 2003

Equivalent citations: AIR 2004 Jhar 85, 2003 (3) JCR 363 Jhr

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Bench: S Mukhopadhaya

JUDGMENT

S.J. Mukhopadhaya, J.

1. The petitioner M/s. DLF Power Limited being not satisfied with the order of withdrawal of No Objection Certificate (for short NOC) granted over four years ago, has challenged the order contained in letter no. 1757 dated 17th July, 2002 issued by Jharkhand State Pollution Control Board (J.S. Pollution Control Board for short).

The NOC earlier granted to the petitioner has been withdrawn and cancelled in pursuance of letter No. 103-22/ EPE dated 18th June, 2002 issued from the Ministry of Environment and Forests, Eastern Regional Office, Government of India, New Delhi. The aforesaid letter dated 18th June, 2002 has also been challenged by the petitioner.

2. The case of petitioner is that it entered into an agreement with the Coal India Limited (for short C.I.L) on 11th January, 1995 for setting up captive power plant, on Build-Own-Operate Basis at Madhuband Washery of Bharat Coking Coal Limited, Dhanbad (for short BCCL). As per the agreement, petitioner is to supply power to Madhuband Washery Areas, at Bagh-maroo in the district of Dhanbad (now in the State of Jharkhand).

The land for the power plant was provided by BCCL, a subsidiary of C.I.L. As per the agreement, petitioner had to arrange finance, design and procure, install, operate and maintain fluidized bed combustion boiler based, Thermal Power Plant along with various other equipments of the power plant.

Further case of petitioner is that the plant based on fluidized bed combustion technology is a latest technology which is environmental friendly. The actual cost of the project as installed is about Rs. 80 crores.

After signing of the agreement and acquiring land, the petitioner vide its application No. 284, dated 26th August, 1997 applied to the Bihar State Pollution Control Board (for short B.S. Pollution Control Board) for obtaining NOC Under Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 (for short Act, 1974) and Under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (for short Act, 1981) for setting up 1 x 10 MW Captive Power Plant at Madhuband. NOC Under Sections 25 and 26 of the Act, 1974 and Under Section 21 of Act, 1981 was issued by the B.S. Pollution Control Board to the petitioner vide Reference no. T- 1975 dated 25th March, 1998. On the basis of NOC dated 25th March, 1998 granted by B.S. Pollution Control Board, the petitioner went ahead with the setting up of the Power Plant and made huge investment of about Rs. 80 crores in the project. It has erected, tested and the plant has already been commissioned in the month of September, 2002 itself.

According to petitioner, it came as a shock to receive letter dated 17th July, 2002 from J.S. Pollution Control Board stating that the NOC granted by B.S. Pollution control Board dated 25th March, 1998 has been cancelled on the plea that NOC was granted without conducting public hearing which is inconsistent with S.O. No. 319 (E), dated 10th April, 1997. The petitioner has been asked to get a fresh environmental clearance before start of construction activity and has been directed to stop all activities such as site clearance.

The cancellation of NOC seems to have been done on the direction of 4th respondent-Union of India vide letter dated 18th June, 2002.

3. Further, according to petitioner, the respondents failed to appreciate the fact that construction and erection of plant had already been carried out after obtaining NOC and the same has already been completed and commissioned after huge investment of Rs. 80 crores.

It has been alleged that the NOC has been cancelled in pursuance of an order dated 18th June, 2002, communicated vide letter dated 17th July, 2002 without issuing any show cause notice to the petitioner and without taking into consideration the relevant fact that the plant has already been commissioned and all the construction activities were complete.

4. Counsel for the petitioner referred to para-18 of the writ petition to suggest that the B.S. Pollution Control Board granted the NOC taking into consideration the relevant documents, as mentioned here under :

"(i) The facts stated in their Application and Project report.

(ii) Bihar State Pollution Control Board's Notification no. 45 dated 8-11-1995.

(iii) Provision of related Water and Air Acts.

(iv) Check list dated 23-10-1997.

(v) The related NOC Committee's decision of 6-3-1998."

It was submitted that the B.S. Pollution Control Board having issued NOC after following all the procedures, it was not open for J.S. Pollution Control Board to reopen the Issue after about four years.

Apart from the allegation of violation of rules of natural justice, it was pleaded that the Doctrine of Promissory Estoppel debars, the respondents from backing out of its commitment made by it in the course of performance of its statutory duties. The petitioner having made huge investment of over Rs. 80 crores in setting up and erecting the power plant pursuant to. NOC dated 25th March, 1998, the respondents cannot back out at this stage. If the NOC would not have been issued by B.S. Pollution Control Board, then the petitioner would not have invested any amount, much less huge amount of Rs. 80 crores on setting up of the power plant.

5. Counsel for the petitioner relied on the decision of the Supreme Court in "Guj-rat State Financial Corporation v. Lotus Hotels Pvt. Ltd.", reported in AIR 1983 SC 848 and the case of "M.P. Sugar Mills v. State of U.P." reported in AIR 1979 SC 621.

6. The respondents have not controverted that the petitioner applied and after due enquiry, the B.S. Pollution Control Board granted NOC to set up 1 x 10 MW captive power plant at Madhuband vide Memo no. T-1975-Patna dated 25th March, 1998.

The following Stand has been taken by the respondent J.S. Pollution Control Board

"That the Additional Director (s), Government of India, Ministry of Environment, Forest, Eastern Regional Office, A/3, Chandrasekharpur, Bhubaneswar by letter no. 133-22/EPE. dated 18th June, 2002 requested that the project activities of the construction of Thermal power plant by the petitioner M/s. D.L.F. adjacent to Madhuban Washery of M/s. B.C.C.L. be stopped and the "No Objection Certificate" accorded to the petitioner be withdrawn with a direction not to initiate any activity preliminary or otherwise at the site without obtaining "No Objection Certificate" from the Ministry of Environment and Forests, Government of India, New Delhi.

The reason assigned by the respondent no. 4 in the instant letter is that as per S.O. no. 319 (E) dated 10.04.1997, the Thermal Power Plant proposed to be located within the radius of 25 KM of Reserve Forest

and critically polluted area shall require environmental clearance from the Central Government. It was informed to the Respondent no. 4 that the State Pollution Control Board, Bihar has granted "No Objection Certificate" for the petitioner's project. The project is attracting the provisions of Environmental Impact Assessment Notification 1994 and amendments thereof are required to get "No Objection Certificate" after the Public hearing conducted by the Pollution Control Board. The No Objection Certificate is given on the condition that the environmental clearance from the Ministry of Environment, and Forests should be obtained. The above project is going ahead with construction activities without complying with the provision of Environment (Protection) Act, 1986. The project is located in the critically polluted area, the site clearance and environmental clearance from the Ministry of Environment and forest is mandatory.

That the notification of Government of India in the Ministry of Environment and Forest No. S.O. 60 (E), dated the 27th January, 1994 in relation to the Thermal Power Plants specified in Schedule-I annexed to this notification lays down that in exercise of powers conferred by Sub-section (1) and Clause (V) of Sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with Clause (9) of sub-rule (3) of Rule 5 of Environment (Protection) Rules, 1986, has directed that on and from the date of publication of this notification in the official gazette, expansion of modernization of any activity (if pollution load is to exceed the existing one) shall not take place or a new project listed in Schedule-I of this notification shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified in this notification.

The Thermal Power Plant have been listed as serial no. 19 in the Schedule-I of this notification.

That S.O. 319 (E) of the Environment Impact Assessment in relation to the Thermal Power Plant notification, New Delhi, the 10th April, 1997, lays down that the power conferred upon the Central Government by Sub-section (1) of Section 3 of the said Act to take measures for protecting and improving the quality of Environment and Preventing controlling and abating environmental pollution be exercisable by the State Government as notified in the notification of the Government of India in the Ministry of Environment and Forest No. 60 (E), dated 27th January, 1994 in relation to the Thermal Power Plants specified in Schedule-I annexed to this notification subject to the conditions and limitations specified in Schedule-II annexed to this notification.

That it has been further mentioned in the "Note" of Schedule-I that any project proposed to be located within the radius of Twenty Five Kilometer of a reserved forest an ecologically sensitive area which may include National Park, Sanctuaries, Biosphere Reservoir, Critically Pollution area within fifty Kilometers of Inter State boundary shall require environment clearance from the Central Government."

Similar plea has been taken by the 4th respondent-Union of India.

7. The petitioner has disputed the fact that the power plant has been set up and is operated within 25 Kms. of forest, or critically pollution area.

8. In the present case, the respondents have not disputed the allegation that before cancellation of NOC, the petitioner was neither noticed, nor heard.

The principle of audi alteram partem is the basic concept of the principal of natural justice. Even in the field of administrative action, this principle requires to be applied to ensure fair play and Justice.

The NOC was granted to petitioner Under Sections 25 and 26 of Act, 1974 by the B.S. Pollution Control Board. Under section 27 of Act, 1974, though it was open to the State Board to review from time to time any condition imposed Under Sections 25 and 26 of the Act, 1974, even in such case, the State Board is required to serve a notice for revoking any such condition.

9. The respondents have not disputed the fact that the petitioner has invested more than Rs. 80 crores and has already erected, set up and commissioned the plant. However, it is not clear whether the place where captive power plant has been set up by petitioner (Madhuband) is within the radius of 25 Kms. of reserve forest or critically polluted area or not and thereby requires environmental clearance from Central Government. In fact, the aforesaid question of fact should have been decided by the respondents prior to withdrawal/ cancellation of NOC after notice and hearing the petitioner.

10. For the reasons aforesaid, the Court has no option but to set aside both the orders contained in letter dated 18th June, 2002 issued by the 4th respondent and the letter dated 17th July, 2002 issued by the 3rd respondent. They are, accordingly, set aside.

Liberty is given to the respondents to decide the aforesaid issue, namely, whether captive power plant is located within the radius of 25 Kms of reserve forest or critically polluted area and thereby environmental clearance from the Ministry of Environment and Forests, Government of India is required or not.

If the respondents intend to decide the aforesaid issue, will notice the petitioner and decide after hearing it.

If it is decided that the captive power plant is located within the radius of 25 Kms. of reserve forest or critically polluted area and thereby requires environmental clearance from the Central Government, the Central Government, in such case, will do needful taking into consideration the fact that the petitioner only because of grant of NOC by B.S. Pollution Control Board, has already set up a plant and has already invested about a sum of Rs. 80 crqres and the project is for the benefit of M/s. B.C.C.L., a Government of India Undertaking.

11. The writ petition is allowed, with the aforesaid observations. However, there shall be no order, as to costs.