

Case Note: The pollution control board provides power to chairman to pass an order. However, by fixing of signature some body passes an order and the authority which communicates, create the reason which are not available under the signature of final authority. The Court held that the manner in which the recommendations were made and the signatures were affixed by the Chairman of Pollution Control Board cannot be accepted. The procedure adopted by the Secretary and the Chairman of the Board unsatisfactory and Contrary to Law hence notice issued to each of the petitioner liable to be quashed.

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IN THE HIGH COURT OF PATNA

C.W.J.C. Nos. 13130 of 2002, 13171 and 13208 of 2002

Decided On: 10.03.2003

Pawan Stone Works and Ors.

Vs.

The State of Bihar and Ors.

Hon'ble Judges:

R.S. Garg, J.

JUDGMENT

R.S. Garg, J.

1. This order shall finally disposed of CWJC Nos. 13130 of 2002, 13171 of 2002 and 13208 of 2002.

2. In reply to the petitioners' objection that the Member Secretary had passed the orders without jurisdiction the Respondent-Pollution Control Board submits that in accordance with Section 4 of the Water (Prevention & Control of Pollution) Act, 1974, a Board is to be constituted and under Section 11A of Water Act the Board may delegate its powers and duties to the Chairman. He submits that in accordance with the Air (Prevention & Control of Pollution) Act, 1981, a Board is to be constituted under Section 5 of the Act and powers of the Board can be delegated in favour of the Chairman or the Member Secretary or any other officer of the Board under Section 15 of the, said Act. He submits that when a State Pollution Control Board is constituted then it is constituted under the Water Act and the said Board shall be deemed to be a State Board for purposes of the Air Act, 1981. Referring to Annexure-V to the supplementary counter-affidavit, it is submitted that in the 25th meeting of the Bihar State Pollution Control Board held on 22nd of April, 1986 under Agenda No. 4 the Chairman had been authorised by the Board. The Chairman is entitled to grant/refuse/withdraw consent in respect of Water and Air Acts subject to the conditions that a list of consent applications granted/refused/withdrawn is placed in the meeting of the Board for information. Learned Counsel for the Pollution Control Board submits that the Member Secretary has not passed any orders rejecting the application

but has simply communicated the reasons which persuaded the Chairman of the Board to reject the application,

3. When this Court asked the learned Counsel for the Pollution Control Board that why the orders passed by the Chairman/President of the Pollution Control Board have not been produced along with additional counter-affidavit, it was submitted that all the files wherein the orders have been passed are available for perusal. He has produced the files for perusal. In the matter of M/s. Pawan Stone Works I have gone through the entire files. Learned Counsel for the Pollution Control Board submits that identical orders have been passed in connected matters. In the matter of M/s. Pawan Stones Works somebody recorded a proceeding on 18-2-2000 and thereafter somebody record that the draft was for approval. Thereafter, on 11-4-2000 the same Gajendra again made certain recommendation. Some Z.O. recorded his notes saying that the notes be perused. The matter was placed before somebody who had to put his initial on 20-4-2000. It is not clear from these proceedings that who had to put his signature initial on 20-4-2000. The matter appears to have been handled by some Gajendar. On 29-4-2000 he recorded that the copy of the consent order in favour of the applicant was received, the file was presented for approval. Some Z.O. has simply recorded "Praroop Anuroop." I understand that he wanted the file to be placed before somebody for approval of the draft. Somebody had again put his signature on 10-5-2000, who had affixed his signature is not clear from this file. The matter again was handled by Gajendra on 10-5-2000. He informed that the consent if was received the Unit had obtained the consent for the period upto 2000. He forwarded the matter. The matter was again forwarded by the said Z.O. to somebody who had affixed his signature on 13-5-2000. Somebody thereafter, recorded a proceeding that the matter be placed before the Committee. The same process for draft approval inspection notice etc. was observed. On 30-6-2001 somebody again referred the matter to one Mr. Jha who referred the matter to the higher authority who in his turn referred the matter to some Mr. Jha on 3-7-2001. Who was that Mr. Jha is not clear from the records. On 4-7-2001 some A. E. E. observed that the Unit did not observe the precondition, therefore, the application may be rejected. On 11-7-2000 somebody recorded a proceeding that as the application for consent was pending it would be in the fitness of things to consider the application. On 26-7-2001 under the signatures of certain persons proceedings were recorded saying that the consent it granted from 1-1-2001 to 31-12-2001 with S.T.D. (standard condition). The matter again came up before the authorities under one head or the other. People at different levels were handling the files and were submitting their reports. On 25-2-2002 as many as four persons affixed their signatures to the order and fixed the case on 12-3-2002 to consider the show-cause. Show-cause notice was issued and thereafter, the matter was taken up by the clerk on 8-5-2002. On 9-5-2002 the Member Secretary observed that the reply to the show-cause has not been submitted nor the pre-conditions have been observed, therefore, the application filed by the Unit can be rejected. He submitted his recommendation for orders. The matter was forwarded by somebody on 9-5-2002 to the Chairman. On 13-5-2002 the Chairman simply affixed his signature. He did not writ even a single word or two to say "as proposed" or as requested or that he agreed with the recommendation or a positive order that for the lapses committed by the Unit the application would stand rejected. That was not the end of the matter. The secretary who was to communicate the order of the President of the Unit, in fact, wrote an order for and on behalf of the Chairman not in the proceeding book but in the notice to the Unit. The notices f Annexure-F for sample; says that for particular reasons and non-

execution/observance of the valid condition earlier imposed the consent order is cancelled.

4. I requested the learned Counsel for the Pollution Control Board to show me any of the findings recorded in Annexure-F in the order passed by the Chairman of the Board. Learned Counsel for the Pollution Control Board simply submitted that as the recommendations made by different authorities and officers were accepted 'as proposed' by the Chairman by endorsing his signature on the recommendations, this Court must hold that whatever is written in notice (Annexure-F) is a part of the order. I required the learned Counsel for the Respondents to show me from the recommendations made by the Member Secretary that any of the petitioners had committed the lapses or so. Learned Counsel for the Board submits that the Member Secretary had written that the earlier conditions were not observed and the refore it must be presumed that everything was brought to the notice of the Chairman and the Member Secretary was justified in issuing a detailed notice as contained in Annexure-F.

5. The argument is attractive but is misconceived. An order must be self explanatory and self-contained. In administrative system an authority sub-ordinate to the final authority may submit its recommendation showing the reasons or proposing the grounds for taking a particular action but the recommendation made by such authority is not the final vardict. The recommendations are simply to help and assist the final authority. The final authority must look into the matter, go through the recommendations and pass its final orders. By simply affixing its initial on the recommendations without saying anything further would not mean that the signatory had accepted everything or passed an order in accordance with the powers conferred upon him. In the present matter the Chairman of the Board unfortunately did not find even half minute's time to say that he was accepting the recommendations. It appears that in a routine manner and with a very cavalier and cursory approach he had affixed his initial to the recommendations. When the power are conferred upon the authority to take action then an action taken by the authority must be founded on the grounds available under the law and not in air. It appears that the Pollution Control Board is suffering with inside pollution. They are not ready and willing to come out of their slumber, rise to the occasion, look into the requirement of law and pass order as expected of them. In system it is not heard of that by affixing the signature somebody passes an order and the authority which communicates, creates the reasons which are not available under the signatures of the final authority. The manner in which the recommendations were made and the signatures were affixed by the Chairman of the Pollution Control Board cannot be approved. The process/procedure adopted by the Secretary and the Chairman of the Board is unsatisfactory and is contrary to law. The orders as contained in separate files deserve to and are accordingly quashed. Similarly the notice issued to each of the petitioner wherein the Secretary had supplied the reasons and had informed each of the petitioner that their applications stand rejected is also quashed.

6. The Chairman of the Board is hereby directed to pass a reasoned order. It is expected of him that if he holds a high office then he would prove his worth to hoid the office by passing reasoned and legal orders and would not simply affix his signature to certain recommendations. The Secretary is hereby forewarned that he is not authorised or entitled to pass any orders except for what he has been authorised either by the Board or by the Chairman. If he has to communicate any order passed by

someone else then he must communicate the orders as passed by the authorities. He is not authorised to add anything or express the reasons which persuaded the authorities to pass the orders.

7. I must record my absolute displeasure on the work and working of the Chairman and the Secretary of the Pollution Control Board. As the illegal orders have been set aside, the petitioners' grievances are redressed but the question still would be that whether they are entitled to the cost or not and if yes, who must suffer the brunt of the cost.

8. Learned Counsel for the Board submits that because of the ignorance of law such orders were passed following the practice and in future such orders would not be passed. I am shocked to hear the argument. When an authority is created under the law for passing orders in accordance with law then such an authority cannot take shelter by saying that they were unaware of the law. When the law takes an action against the petitioner/applicant then the ignorance of the very same law should not prove to be a bliss in favour of the authority who is expected to know law. In any case, ignorance of law would be no excuse. I hereby direct that the President/Chairman and the Secretary shall pay Rs. 1000/- (one thousand) each as cost to each of the petitioner. The cost shall be paid by them personally within four weeks from today.

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