

Before S.S.Saron & Darshan Singh, JJ.

SANJEEV KUMAR—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No.18381 of 2016

January 30, 2017

Constitution of India, 1950—Arts.226 and 227—Water (Prevention and Control of Pollution) Act, 1974 —S. 24—Air (Prevention and Control of Pollution) Act, 1981—‘Consent to establish’—Industrial unit—Revoked—No show cause notice—No hearing—Petitioner granted consent to establish poultry farm—Panchayat resolution—To stop poultry farm adjoining Gurudwara Sahib—License revoked—Violative audi alteram partem, principles of nature justice.

Held that, the rule of *audi alteram partem* is a well-accepted facet of the principles of natural justice as enshrined by the provisions of Article 21 of the Constitution of India and person has a right to be heard before any order adverse to him and affecting his rights is passed.
(Para 11)

Further held that, in the circumstances, no order involving adverse civil consequences is liable to be passed against any person without giving him an opportunity to be heard against the order that is to be passed and this rule of natural justice applies to quasi-judicial and administrative proceedings.
(Para 13)

Dinesh Ghai, Advocate
for the petitioner.

P.P.S.Thethi, Addl.AG, Punjab
for respondent no.3.

S.S.SARON, J.

(1) Petitioner-Sanjeev Kumar by way of the present petition under Articles 226 and 227 of the Constitution of India seeks quashing of the order dated 12.07.2016 (Annexure P-12) passed by the Sr. Environmental Engineer, Punjab Pollution Control Board, Zonal Office, Patiala (respondent no.2) whereby the No Objection Certificate

(NOC) No. G16PTACTE410442 dated 24.05.2016 issued to the petitioner vide office letter dated 25.05.2016 (Annexure P-2) has been revoked/cancelled.

(2) The petitioner purchased land measuring 22 Bighas 4 Biswas at village Shambu Kalan, Tehsil Rajpura, District Patiala in the name of 'M/s A- One Poultry Farm' vide registered sale deed dated 16.03.2016 (Annexure P-1). The petitioner had already sought permission/NOC from the State of Punjab through its Member Secretary, Punjab State Pollution Control Board, Vatavaran Bhawan, Nabha Road, Patiala (respondent no.1) ('Board' - for short) to establish and start business/industry of poultry farm in the name and style of 'M/s A-One Poultry Farm'. The permission was granted to the petitioner vide NOC G16PTACTE410442 dated 24.05.2016 (Annexure P-2), which was issued vide letter dated 25.05.2016. The petitioner got the construction of infrastructure started in the poultry farm in question. According to the petitioner, the construction had been got stopped by notorious persons as they did not want the poultry farm to continue probably for their own self motive. Therefore, threats were held out to the petitioner and also to the labour working at the site of construction. The matter was also reported to the concerned police post in terms of a complaint dated 17.06.2016 (Annexure P-3). Since, the threats had continued, the petitioner filed CRM-M-23398 of 2016 titled as "Sanjeev Kumar Vs. The Sr. Superintendent of Police, Patiala and others" in this Court for providing protection to his life and liberty. The said petition was disposed of by this Court vide order dated 22.07.2016 (Annexure P-4) directing the Senior Superintendent of Police, Patiala to look into the contents of the complaint dated 17.6.2016 submitted to the concerned police in-charge and to take necessary action thereon in accordance with law. According to the petitioner, notorious persons who belong to the ruling party/State Govt. had their personal interests and had got the construction of the poultry farm stopped.

(3) Notice of motion and notice regarding stay was issued to the respondents.

(4) Mr. P.P.S.Thethi, Additional Advocate General, Punjab has filed reply by way of affidavit of Mr. Harpreet Singh Sudan, IAS, Sub Divisional Magistrate, Rajpura, District Patiala (Respondent no.3).

(5) The said reply is taken on record.

(6) A short reply of Sh. Rakesh Kumar Nayar, Environment Engineer of the Board has already been filed on behalf of respondents

No.1 and 2. According to the said reply a complaint was received from the office of the Sub-Divisional Magistrate, Rajpura regarding nuisance caused by poultry farms existing at villages Bathonia Kalan, Bathonia Khurd, Suhron and Jakhepal etc. The Sub Divisional Magistrate, Rajpura, it is submitted, called a meeting on 01.04.2016 and it was decided that the Board Officers would visit six poultry farms at the aforesaid villages along with representatives of the villages and would submit their report to the Sub-Divisional Magistrate. The poultry farms were visited on 01.04.2015 (sic. 2016) and again on 02.05.2016 and detailed reports of the Environmental Engineer of the Board were sent to the Sub-Divisional Magistrate, Rajpura. Meanwhile, residents of villages gathered at village Bathonia and started agitation against the authorities demanding that the poultry farms be shut down immediately. The agitation of the villages continued for more than a week. The roads leading to the poultry farms were blocked. The District Administration made different committees to assess the situation and also take preventive measures to control the nuisance caused from the operation of the poultry farms.

(7) It is further submitted that the petitioner had applied for 'consent to establish' (NOC) from the pollution angle for the establishment of poultry farm for 1,00,000 birds (Eggs @ 70,000 nos./day) at village Shambu Kalan, Tehsil Rajpura, District Patiala. The poultry farm submitted the requisite documents and fee along with its application form. The site was visited by an officer of the Board on 16.05.2016. The proposed site met with the general guidelines to establish the unit as per the Board's policy dated 30.04.2013 and environmental guidelines for poultry farm issued by CPCB vide letter dated 20.10.2015. Therefore, after considering the application of the petitioner, 'consent to establish' (NOC) from pollution angle with certain conditions was granted vide letter 25.05.2016.

(8) The Board then received a letter dated 06.06.2016 (Annexure R-2/1) from the Sub-Divisional Magistrate, Rajpura stating that in case the consent was granted for setting up a poultry farm, it would lead to a law and order situation as the residents of the village/Panchayat had expressed their disapproval for setting up a new poultry farm in the area and near to the land owned by the Gurudwara Sri Guru Granth Sahib. Therefore, it was addressed to the Board that the 'consent to establish' should not be granted to the poultry farm without the permission of the residents of the village and the Gram Panchayat. In the light of the aforesaid letter, the competent authority of

the Board decided to revoke the NOC already granted to the poultry farm in terms of the advise of the Sub-Divisional Magistrate, Rajpura because there was public resentment against the establishment of the poultry farm. It is also mentioned that vide communication dated 11.11.2016 (Annexure R-2/2) the Sub Divisional Magistrate again informed the Board that in case permission was granted for the establishment of a poultry farm, it would lead to serious law and order situation. The 'consent to establish' (NOC) granted to the poultry farm had been cancelled by the Board keeping in view the recommendations/directions of the Sub-Divisional Magistrate, Rajpura in order to avoid a serious law and order situation in the said area. It is, however, submitted that the Board had no objection in granting the NOC if the District Administration has no reservation in this regard.

(9) In terms of the reply of respondent No.3, it is stated that the petitioner after obtaining NOC from the Sr. Environmental Engineer of the Board (respondent no.2), started construction work at the site at village Shambu Kalan, Tehsil Rajpura, District Patiala. However, residents of the neighboring village as also the Gram Panchayat raised protests against the said construction. The predecessor of the present Sub Divisional Magistrate, Rajpura vide letter dated 06.06.2016 (Annexure R-3/1) sent a request accompanied by applications of the Gram Panchayat of villages Basmah, Sharnbu Kalan, Shambu Rajputa, Lohad, Nandgarh, Sarai Mugal, Ghadama Kalan/Khurda, Nosahara, Ram Nagar Sainiya, Nanhera, Tepla, Ragarh and Gurudwara Sahib Shambu Kalan to the State Government through Member Secretary of the Board and the Senior Environmental Engineer of the Board (respondents no.1 and 2). It was submitted that 'M/s A-One Poultry Farm' Shambu Kalan wanted to start a poultry farm in the land in Khewat Khata No.620/753 and 804/944. The said land was in the ownership share and possession of Guru Granth Sahib, Shambu Kalan. Its boundary ridge ('watt') adjoins the land of the Gurudwara Sahib. In case the petitioner succeeds in setting up a poultry farm in the said land, then there would be great difficulty with respect to the above referred Gurudawara Sahib and other residents of village Shambu Kalan. The Gram Panchayat of Village Shambu Kalan had also passed a resolution dated 17.05.2016 for stopping the above referred poultry farm to be operational. It is submitted that in case, without the consent of the Panchayat, the poultry farm was allowed in the vicinity of the adjoining Gurudwara Sahib, then feelings of the people would be hurt and there would be danger to law and order. The Sub-Divisional Magistrate, Rajpura (respondent No.3) sought a fresh report regarding law and

order from the Deputy Superintendent of Police, Ghanour vide letter dated 14.10.2016 (Annexure R-3/2). This was sought after letter dated 06.10.2016 (Annexure R-3/3) was received from the Environmental Engineer of the Board (respondent No.2). The Deputy Superintendent of Police, Ghanour vide letter dated 10.11.2016 (Annexure R-3/4) submitted if the construction of M/s A- One Poultry Farm was started or it was allowed to function, then the residents of the area would raise strong protests and there would be an apprehension of breach of peace and law and order.

(10) In short, the case of the petitioner is that for setting up a poultry farm by the name of M/s A-One Poultry Farm in village Shambu Kalan, he was granted 'consent to establish' an industrial unit under Section 24 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 vide communication dated 24.05.2016 (Annexure P-2). The said consent was granted by the Sr. Environmental Engineer of the Board (respondent no.2). However, now the said consent had been revoked vide letter dated 12.07.2016 (Annexure P-12). The said revocation of the licence of the petitioner is without hearing or even issuing a show cause notice to him.

(11) We have given our thoughtful consideration to the matter. We are of the view that the rule of *audi alteram partem* is a well accepted facet of the principles of natural justice as enshrined by the provisions of Article 21 of the Constitution of India and a person has a right to be heard before any order adverse to him and affecting his rights is passed.

(12) In *National Textile Workers' Union etc. versus P.R. Ramakrishnan and others*¹ it was observed that the audi alteram partem rule which mandates that no one shall be condemned unheard is one of the basic principles of natural justice and if this rule is held to be applicable in a quasi- judicial or even in an administrative proceeding involving adverse civil consequences, it would a fortiori apply in a judicial proceeding such as a petition for winding up of a company. It was further observed that it would indeed be strange that the workers who had contributed to the building of the enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power.

(13) In the circumstances, no order involving adverse civil

¹ AIR 1983 SC 75

consequences is liable to be passed against any person without giving him an opportunity to be heard against the order that is to be passed and this rule of natural justice applies to quasi-judicial and administrative proceedings. The Senior Environmental Engineer of the Board (respondent no.2), in the present case, passed the order dated 12.07.2016 (Annexure P-12) without notice and without hearing the petitioner. The Senior Environment Engineer of the Board (respondent no.2) who passed the impugned order may or may not be justified in doing so; however, the right of hearing to an aggrieved person, who has got the NOC/consent to operate the poultry farm after complying with all the necessary conditions was not liable to be dispensed with. Therefore, the petitioner was not liable to be non-suited on the ground as had been stated in the impugned order (Annexure P-12). We are of the view that the order dated 12.07.2016 (Annexure P-12) is to be invalidated and an opportunity of hearing is liable to be given to the petitioner so as to explain his position and satisfy the authorities of his case.

(14) Accordingly, the civil writ petition is allowed and the order dated 12.07.2016 (Annexure P-12) is set aside and quashed and the matter is remitted back to the Board for passing a fresh order after hearing the petitioner.

(15) Learned counsel for the petitioner states that till such time the matter is heard and decided, he shall maintain status quo at the site. However, it is prayed that the Board may expedite the hearing.

(16) In the circumstances, *status quo* with regard to the position at the site shall be maintained by the petitioner. However, the Board shall consider and decide the case of the petitioner as expeditiously as possible and preferably within three months from the receipt of the copy of the order. It is also submitted by the learned counsel for the petitioner that the NOC is up till May, 2017 and in case the NOC is to be continued, the same may also be considered for extension of period.

(17) The Board at the time of consideration of the case of the petitioner for grant of consent to operate in case it decides to grant the necessary consent, it shall also consider the extension of time to the petitioner to a date beyond May 2017, keeping in view the present litigation.