



2026:AHC-LKO:3343

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 221 of 2026

Sudhindra V. Desai And 5 Others

.....Applicant(s)

Versus

U.P. Pollution Control Board Thru. Its Assistant
Environmental Engineer Shri Ashutosh Pandey
Lko.

.....Opposite
Party(s)

Counsel for Applicant(s) : Shivanshu Goswami

Counsel for Opposite Party(s) : Ashok Kumar Verma, Shri S.S.Rajawat

Court No. - 16

HON'BLE BRIJ RAJ SINGH, J.

1. Sri S.S. Rajawat, learned counsel for the opposite party has filed a short counter affidavit, which is taken on record.
2. Heard Sri Dileep Kumar, learned Senior Advocate, assisted by Sri Raghuvansh Misra, Advocate, Sri Subhash Gulati, Advocate, Sri Sudhanshu Kumar, Advocate, and Sri Shivanshu Goswami Advocate for the applicants and Sri S.S. Rajawat, Advocate and Shri Ashok Kumar Verma, Advocate for the opposite party.
3. This application has been filed by the applicants mainly with the following prayer:

".... in the aforesaid facts and circumstances the Application preferred under Section 528 BNSS may kindly be allowed, and the Impugned Summoning Order dated 19.02.2022 and the Criminal Complaint Case no. 7217 of 2020 under Section 37 of the Air (Prevention and Control of Pollution) Act, 1981 dated 24.12.2020 along with all the Consequential Proceedings in Complaint Case no. 7217 of 2020, under Section 37 of the Air (Prevention and Control of Pollution) Act, 1981, titled "U.P. Pollution Control Board, through Shri Ashutosh Pandey v. M/s Larsen and Toubro Ltd., through its Directors" pending in the Court of Learned Special Judicial Magistrate

Pollution/CBI (Annexuren 122) (Water Air Pollution Control Lucknow), Lucknow may kindly be quashed, in so far as the Applicants are concerned."

2. It is case of the applicants that the Applicant No. 1 (Accused No. 20 in the Complaint Case) is Whole-time Director & Sr. Executive Vice President (Civil Infrastructure) of M/s Larsen & Toubro Ltd. (hereinafter referred to as "L&T"/ "Company"), Applicant No. 2 (Accused No. 21 in the Complaint Case) is Whole-time Director & Sr. Executive Vice President (Utilities) of L&T, Applicant No. 3 (Accused No. 5 in the Complaint Case) is President, Whole-time Director & CFO of L&T, Applicant No. 4 (Accused No. 15 in the Complaint Case) is Chairman & Managing Director of L&T and Applicant Nos. 5 & 6 (Accused Nos. 3 & 6 in the Complaint Case) are Independent Directors of L&T. That L&T is a Company under Section 2(20) of the Companies Act, 2013 and is one of the India's leading multinational companies engaged in Construction, Technology, Engineering, and manufacturing activities. L&T has been associated with various prestigious projects of construction and other civil works all throughout the country and abroad. The Dedicated Freight Corridor Corporation of India Limited (DFCCIL) is a Government of India (Ministry of Railways) enterprise having its Registered office at Room No. 501, 5th Floor, Pragati Maidan, Metro Station Building Complex, New Delhi-110001 and has been created to undertake planning & development, mobilization of financial resources and construction, maintenance, and operation of the dedicated freight corridors in the Country. The L&T was awarded a Contract dated 15.03.2018 by the DFCCIL for the Design and Construction of Civil, Structures and Track Works for Railway, involving Formation in Embankments/Cuttings, Ballast on Formation, Track Works, Bridges, Structures, Buildings, Yards, Integration with Indian Railways' existing Railway System and Testing Commissioning on Design-Build Lump Sum Basis for Khurja - Pilkhani (approximate 222 route km of single & line) Section of Eastern Dedicated Freight Corridor-CP-303. For carrying out part of the awarded works under the Project, L&T was required to set up a concrete Batching plant and DFCCIL had accordingly provided a portion of the land situated at Plot No. 836/838, Village Saidpur Husainpur, Dilna, Mohiuddinpur

Ghaziabad, 250205. The L&T had established the above-mentioned Batching Plant after duly obtaining the requisite Consent to Establish dated 01.12.2018 under the provisions of Section 21/22 of the Air (Prevention and control of Pollution) Act, 1981 ("Air Act, 1981") from the office of the UP-Pollution Control Board (hereinafter referred to as "the Board"/ "Opposite Party"). The L&T also obtained the requisite consent to operate both under the provisions of the Air Act, 1981, and the Water (Prevention and Control of Pollution) Act, 1974 ("Water Act, 1974") vide Consent Orders dated 21.08.2020 and 31.08.2020 respectively from the Opposite Party. All precautions were taken, and the conditions stated in the above-mentioned consent orders were followed by L&T to prevent any pollution from the functioning of the aforesaid Batching Plant.

3. The Pollution Board claims that on 14.12.2020, its officials had conducted an inspection of the Plant set up by L&T and recorded certain violations, which were mentioned in its Inspection Report dated 14.12.2020. It is argued by the applicants' counsel that the Inspection Report was not prepared on the spot, but has been prepared subsequently, which is evident from the fact that the Inspection Report was never served upon L&T nor on any of the Accused including the Applicants herein either on the date of inspection or anytime thereafter. Pertinently, in respect of a similar contract for the DFCCIL Project, L&T had similarly established another temporary Batching Plant at another site being near sector-146, Metro station, NOIDA-Greater NOIDA expressway, UP, after duly obtaining the requisite permissions under the provisions of the Water Air (Prevention and control of Pollution) Act, 1974 and the Air (Prevention and control of Pollution) Act, 1981 from the Opposite Party.

4. On the very same day (14.12.2020), another team of the Opposite Party conducted an inspection at the above-mentioned Batching Plant at Noida and allegedly found some non-compliances vide an Inspection Report prepared on 23.12.2020. The Opposite Party, thereafter, filed a separate complaint case before the court of the Learned Special Judicial Magistrate (Water Air Pollution Control Lucknow) Lucknow being Complaint Case No. 7215 of 2020. Significantly, this Complaint case was lodged by the Opposite Party against L&T and its Project Manager. The entire Batching

Plant which is subject matter of the present complaint has been dismantled and the premises already been vacated by L&T on 31.07.2022 and the same has also been intimated to the Opposite Party vide letter dated 26.10.2023. Furthermore, the Project has also been duly completed by L&T on 26.07.2024. The Applicants recently came to know about the filing and pendency of the above-mentioned complaint case subject matter of the present Application which has been filed on the basis of an alleged Inspection Report dated 14.12.2020 (Annexure-7) alleging that upon the inspection of the premises, it was found that the company had established their Industrial plant without obtaining previous consent from the Board, which is in violation of Section 21 of the Air Act, 1981. It was also alleged that the dust particles were found uncovered in the premises and no water sprinklers were found established to settle the dust particles while loading and unloading of the building material, which was allegedly in violation of the conditions of the Consent order, punishable under Section 37 of the Air Act, 1981.

5. Sri Dileep Kumar, learned Senior Counsel, has invited attention of the court towards the consent under Section 21/22 of the Air Act, 1981, wherein it is provided that the consent is valid for the period from 01.08.2020 to 31.07.2022. The said consent is issued by the U.P. Pollution Control Board itself. He has further submitted that in para-3 of the complaint filed by the opposite party- U.P. Pollution Control Board it has been mentioned that the opposite parties have established their industrial plant without obtaining previous consent from the complainant Board, which is violative to the provision of Section 21 of the Air Act, 1981. It has been further submitted by counsel for the applicants that the said fact mentioned in the complaint is totally incorrect in view of the consent order dated 21.08.2020, as contained in Annexure-5 to the application. He has also submitted that the Magistrate while issuing the summons has wrongly applied its mind and while issuing summons only ground has been mentioned that the prior approval/consent was not obtained by the Board and without prior approval/consent the Unit was doing its work. It is also submitted that the satisfaction recorded by the court below is totally without application of mind and there is no other ground of satisfaction recorded by the court below while issuing the

summons, therefore, the summon is liable to be set aside.

6. Learned counsel for the applicants Sri Dileep Gupta, Senior Advocate, has relied on the judgment of Hon'ble the Supreme Court in the case of **Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923**, wherein it has been observed as under:

"However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.

7. The learned counsel has also submitted that the entire Directors of the Board have been made party and they have been summoned, which is also without application of mind.

8. On the other hand, learned counsel for the U.P. Pollution Control Board, Sri S.S. Rajawat, Advocate, has submitted that while issuing summons the other aspects, i.e. the inspection report as well as the condition attached with the consent letter, have also been considered. He has submitted that site of the industrial plant was inspected on 14.12.2020 by the officers authorized by the Board. During inspection, the industrial unit in question was found uncovered due to which dust particles were found in premises. There were no water sprinklers installed to settle the dust particles while loading and unloading of the building materials, which was in violation of the conditions of the consent, thereby violating the mandatory provision of section 21 of the Air Act, 1981.

9. Sri S.S. Rajawat has relied on judgment of **Dy. Chief Controller of Imports and Exports v. Roshanlal Agarwal, 2003 AIR (SC) 1900**, specially **Para-8**, which reads as under:

"8. The second reason given by the High Court for allowing the petition filed by the respondents (accused) is that the order passed by the Special Court taking cognizance of the offence does not show that the learned Magistrate had even perused the complaint or that he had applied his judicial mind before taking of the cognizance. The order passed by the learned Magistrate reads as under: "Cognizance taken. Register the case. Issue summons to the accused." 9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not, whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in *U.P. Pollution Control Board v. M/s. Mohan Meakins Ltd. & Ors.*, AIR 2000 S.C. 1456 and after noticing the law laid down in *Kanti Bhadra Shah v. State of West Bengal*, AIR 2000 S.C. 522, it was held as follows: "The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order." 10. This being the settled legal position, the order passed by the learned Magistrate would not be faulted on the ground given by the High Court. The High Court has gone to the extent of saying that as the Deputy Chief Controller of Imports and Exports had not been examined as a witness, the procedure prescribed by Section 200 Cr.P.C. had not been followed and, therefore, the order passed by the Magistrate taking cognizance of the offences was illegal. With respect, we find it difficult to comprehend the aforesaid reasoning of the High Court. Section 6 of the Imports and Exports

(Control) Act provides that no Court shall take cognizance of any offence punishable under Section 5 except upon a complaint in writing made by an officer authorised in this behalf by the Central Government by a general or a special order. That the Deputy Chief Controller of Imports and Exports had been so authorised by the Central Government is not in dispute. Proviso (a) to Section 200 Cr.P.C. lays down that if a public servant acting or purporting to act in the discharge of his official duties has made the complaint in writing, the Magistrate need not to examine the complainant and the witnesses. In view of Twelfth clause of Section 21 IPC which provides that every person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government shall be a public servant, the Deputy Chief Controller of Imports and Exports is a public servant. It is also not the case of the accused-respondents that the Deputy Chief Controller of Imports and Exports is not a public servant. The complaint was filed by him in discharge of his official duty. The learned Magistrate was, therefore, fully justified in taking cognizance of the offences without recording the statement of the complainant."

10. After hearing learned counsel for the parties at length and going through the records, this court finds that the consent letter dated 21.08.020 indicates that the said consent issued by the U.P. Pollution Board is valid for the period from 01.08.2020 to 31.07.2022. The Magistrate while passing the order impugned has observed that " उक्त प्रपत्रों के अवलोकन से यह दर्शित है कि परिवादी द्वारा विपक्षी सं०-०१ लगायत 21 द्वारा परिवादी बोर्ड की पूर्व सहमति प्राप्त किए बिना उद्योग का संचालन किया गया। अतः प्रथम दृष्ट्या धारा-21 वायु अधिनियम के आज्ञापक प्रावधानों का उल्लंघन विपक्षी सं०-०१ लगायत 21द्वारा किया जाना दर्शित है। अतः उपरोक्त के आधार पर विपक्षी सं०-०१ लगायत 21 को धारा -37 वायु अधिनियम 1981 के तहत तलब किए जाने का आधार पर्याप्त है।".

11. The aforesaid consideration indicates that the learned Magistrate has noted incorrect fact, wherein he has mentioned that without prior approval/consent the Unit is being run by the applicants. This fact is totally wrong after bare perusal of letter dated 21.08.2023. There is no

other finding recorded by the court while issuing summons. Only he has said that he has seen the documents, thus, he has to apply his mind for the other documents placed by the complainant, but the same is missing. The ground taken by him for issuing summons is not sustainable, therefore, the applicant is allowed. The impugned Summoning Order dated 19.02.2022 passed in the Criminal Complaint Case no. 7217 of 2020, U.P. Pollution Control Board v. M/s Larsen and Toubro Ltd., under Section 37 of the Air (Prevention and Control of Pollution) Act, 1981, pending in the Court of Learned Special Judicial Magistrate Pollution/CBI (Water Air Pollution Control Lucknow), is hereby set aside.

12. The matter is remitted back to the learned Magistrate, concerned, with the direction that he will take a fresh decision expeditiously from today, after applying its mind, without giving unnecessary adjournment to either of the parties.

(Brij Raj Singh,J.)

January 16, 2026

A.Nigam