

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN  
AND  
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY**

**WRIT PETITION No.10085 OF 2020**

**ORDER:** (Per Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The Petitioner, M/s.Kosher Pharmaceuticals Private Limited, has challenged the legality of the closure notice, dated 23.05.2020, passed by the respondent No.3.

The petitioner claims to be a pharmaceutical company of bulk drugs situated in survey Nos.286, 289 (part) and 297 (part) of Jagdevpur Village and Mandal, Siddipet District. It claims that it is engaged in manufacturing of bulk drugs. Moreover, on 12.02.2015, it was granted the Certificate For Establishment (CFE) to manufacture fifteen (15) bulk drugs with maximum production capacity of 1900 kg/day, with a condition that the Industry shall not produce more than four products, and individual capacities mentioned therein at any given point of time. Subsequently, on 18.09.2017, it was granted the Consent For Operation (CFO) under the Hazardous Waste Act for manufacturing two products at a given point of time, out of fifteen products. Maximum production capacity for manufacturing these products would be 1300 kg/day. Moreover, according to the petitioner, the CFO was renewed, and continues to be valid till 31.03.2023.

According to the petitioner, on 15.03.2020, the respondent No.2 received a complaint with regard to the discharge of acid water into the neighbouring lands, and with regard to their causing ground water pollution in the surrounding areas. Therefore, an Inspection was carried out on 06.05.2020; according to the petitioner, an Inspection Report was prepared behind its back. Subsequently, without giving any opportunity of hearing, the closure notice was

issued on 23.05.2020. Hence, the present writ petition before this Court.

The learned counsel for the petitioner has vehemently contended that prior to the issuance of the impugned closure notice, an opportunity of hearing should have been given to the petitioner. However, such opportunity of hearing was never given. Therefore, the impugned closure notice is violative of principles of natural justice.

On the other hand, Ms. Padmaja, the learned standing counsel for the Pollution Control Board, submits that both Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, grant ample powers to the Pollution Control Board to immediately order the closure of a unit, in case the Pollution Control Board is of the opinion that pollution is being caused to a great extent which would endanger human life. Therefore, while invoking the powers under these two provisions, the closure notice, dated 23.05.2020, was passed by the respondent No.3. Therefore, she has supported the impugned closure notice.

Heard the learned counsel for the parties, and perused the impugned notice, and the records submitted by the petitioner as well as the report submitted by the Pollution Control Board.

Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, is as under:-

33A. 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.

Explanation.- For the avoidance of doubts, it is hereby declared that the power to issue directions under this Section includes the power to direct-

- (a) the closure, prohibition or regulation of any industry, operation or process; or

- (b) the stoppage or regulation of supply of electricity, water or any other service.

Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, is as under:-

31A. 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.

Explanation.- For the avoidance of doubts, it is hereby declared that the power to issue directions under this Section includes the power to direct-

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service.

A bare perusal of both these provisions clearly reveals that they are in identical terms. Moreover, neither of these two provisions require that the principles of natural justice should be followed. Moreover, both these provisions bestow an urgent power, or an exceptional power, on the Pollution Control Board to deal with an urgent situation, whereby the closure of a unit may be required on an emergent basis. Therefore, the learned counsel for the petitioner is unjustified in claiming that before the power under Section 33A of the Water (Prevention and Control of Pollution) Act, and Section 31A of the Air (Prevention and Control of Pollution) Act, is invoked, an opportunity of hearing should have been given to the petitioner.

However, a post-decisional hearing can always be given by the Pollution Control Board to the erring unit to rectify the defects, or the violations, committed by the erring unit. A bare perusal of the Report submitted by the Pollution Control Board clearly reveals that there is a large number of lacunae/defects/violations of the Water (Prevention and Control of Pollution) Act, and of the Water (Prevention and Control of Pollution) Act, allegedly committed by the petitioner. But,

nonetheless, the petitioner must be given a chance to rectify the errors committed by it. Therefore, this Court directs the respondent No.2 to give an opportunity of hearing to the petitioner as a post-decisional hearing, and to give him sufficient time to rectify the defects present in the functioning of the unit, and to give it sufficient time to comply with the requirements of law.

With these directions, this writ petition stands disposed of. Miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

**RAGHVENDRA SINGH CHAUHAN, CJ**

**B. VIJAYSEN REDDY, J**

01.09.2020  
Pln

