

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 33 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE
A.J.DESAI

and

HONOURABLE MR. JUSTICE BIREN VAISHNAV

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

ISHRAT BHAYA

Versus

CENTRAL POLLUTION CONTROL BOARD

Appearance:

MR JITENDRA MALKAN, ADVOCATE FOR
MS DEVANSHI P MALKAN(9307) for the Applicant(s) No. 1
MR BRIJESH RAMANUJ, ADVOCATE FOR
MR ANKIT SHAH(6371) for the Opponent(s) No. 1
MR RUTVIJ S OZA(5594) for the Opponent(s) No. 2
MR ANSHIN DESAI, SENIOR ADVOCATE WITH
MR BHASH H MANKAD(6258) for the Opponent(s) No. 3

**CORAM:HONOURABLE THE ACTING CHIEF JUSTICE MR.
JUSTICE A.J.DESAI
and
HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 16/03/2023

ORAL JUDGMENT

**(PER : HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE
A.J.DESAI)**

1. By way of this petition, the petitioner who is resident of Village: Sodasala, Taluka: Salaya, District: Devbhumi Dwarka, has raised an issue that the private respondent No.3, i.e. Nayara Energy Limited has its unit at Village: Vadinar Vill, District: Devbhumi Dwarka was causing pollution by discharging hazardous waste by not following the necessary requirement to control the pollution which arises from such discharge.
2. It is the grievance of the petitioner that the respondent Board has not properly calculated the amount of fine to be paid by the private respondent company for violating several environmental pollutants under the Environmental (Protection) Act, 1986.
3. In response to the notice issued by this Court, Gujarat Pollution Control Board has filed affidavit-in-reply and has

produced relevant documents opposing the allegations made against the Board about not taking action as well as not calculating the fine which has been imposed by the Board.

4. The private respondent company has not filed an affidavit.

5. Mr. Jitendra Malkan, learned advocate for the petitioner would submit that the respondent company came to be registered on 6.8.2015 and since on the same date, such hazardous waste are remitted which causes pollution. By taking us through a notice issued by the Board which has been produced by the petitioner dated 6.6.2018, he would submit that the authority has not considered the date of establishment of the unit. However, only after visiting the unit, i.e. in the month of May 2018, a notice came to be issued. He would further submit that the affidavit-in-reply filed by the respondent board is silent on this aspect and, therefore, he would submit that the respondent board be directed to re-calculate the amount of fine which is required to be paid by respondent No.3 and the petition be accordingly allowed.

6. On the other hand, Mr. Brijesh Ramanuj, learned advocate

for the respondent board would submit that in the affidavit-in-reply dated 29.7.2022 filed on behalf of the board, there was continuous supervision and verification by a system known as Online Continuous Emission Monitoring System (OCEMS) installed on the basis of SMS alerts received by the board. When the board received the SMS through said installation, the team of the board visited the premises on 2.5.2018 and having found some emission on the part of the private company, a notice was issued on 6.6.2018. He would submit that after calculating damage as per the criteria provided under various provisions and resolutions / notifications, the company was awarded a fine of Rs.61,20,000/-. He would submit that the said amount has already been deposited by the respondent company. Thereafter the board by order / communication dated 29.1.2019 decided to close the proceedings by issuing certain directions. However, he would further submit that the system of monitoring through OCEMS is continuously going on by the board and he would submit that as and when emission is found on behalf of the respondent company, the board would take immediate action.

7. Mr. Anshin Desai, learned Senior Advocate appearing with

Mr. Bhash H. Mankad, learned advocate for the private respondent No.3 would submit that the present petitioner is not resident of Village: Vadinar where the plant is located. He would submit that the petitioner is resident of another village which is at a distance of 20 kms. and he would submit that with ulterior motive, the present petition has been filed and that too without verifying the orders which have been passed by the Board way back in the year 2019. He would, therefore, submit that petition be dismissed.

8. We have heard learned advocates for the respective parties.

9. It has been specifically stated by the board that continuous monitoring was made through OCEMS and when they found on 2.5.2018 about emission on the part of the company, a notice was issued. The respondent company was asked to pay an amount of Rs.61,20,000/- which has been deposited by the company way back in the year 2019.

10. Accepting the same, the board has further directed to comply with the provisions of the Environment (Protection) Act

and to ensure that uninterrupted connectivity with Pollution Control Board survives so that monitoring can be made through OCEMS.

11. The submission made by Mr. Malkan, learned advocate for the petitioner that the unit was established in the year 2015 and the company was found emitting hazardous elements and the levy of fines should be considered from that day, cannot be accepted without any cogent material produced by the petitioner or the case put forward by the Gujarat Pollution Control Board that the continuous monitoring was made through OCEMS system.

12. Hence, we do not find any reason to continue this writ petition and particularly when the board is monitoring day-to-day with regard to the pollution. The petition stands dismissed. Notice is discharged.

(A.J.DESAI, ACJ)

(BIREN VAISHNAV, J)

Bharat