

LIST OF DATES & EVENTS

19/09/2016	Application for Consent to Establish (CTE) by the Petitioner vide Enquiry Counter IDNo..... dated
30/09/2016	E-mail bygranting Consent to Establish (CTE) to the Petitioner.
02/07/2018	Application by the Petitioner for Consent to Operate (CTO) by the Petitioner .
23/03/2019	Application No..... as shown on.....
30.05.2019	Show cause Notice datedvide F.No.issued by theto the Petitioner.
13/06/2019	Reply by the Petitioner to the Show-Cause Notice issued by the.....
01/07//2019	Direction(s) passed by the..... Pollution Control Committee to the Petitioner,.....
10.06.2019	Hence the present Writ Petition against the direction(s) datedpassed byvide F. No.....

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL ORIGINAL JURISDICTION)**

WP (C) No. OF 2019

IN THE MATTER OF:

....PETITIONER

VERSUS

State

....RESPONDENTS

**WRIT PETITION (CIVIL) UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE
NATURE OF MANDAMUS/DIRECTIONS/ORDERS SEEKING
DIRECTIONS AGAINST THE SEALING OF BUSINESS UNIT OF THE
PETITIONER AND OR ANY CO-ERCIVE ACTION AGAINST THE
PETITIONER .**

TO,

**THE HON'BLE CHIEF JUSTICE AND HIS COMPANION
JUSTICES OF THE HON'BLE HIGH COURT OF DELHI AT
NEW DELHI.**

**THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED**

MOST RESPECTFULLY SHOWETH:

1. That it is most respectfully submitted that the Petitioner herein is filing the present Petitioner under Art 226 of Constitution of India read with Article 21 Constitution of India for issuance of Writ of Mandamus or any other writ/ direction to the Respondent(s) for not taking any coercive action against the business unit of the petitioner in lieu of order datedvide F. No.passed by the Pollution Control Committee, for enforcement of Petitioner's fundamental right of "Right to

Livelihood” under Article 21 of the Constitution. Copy of the order dated vide F. No.passed by the Pollution Control Committeeis annexed and marked as **Annexure P-1.**

2. That the Petitioner is aggrieved at the hands of Respondent No.2 ie Pollution Control Committeewhich has vide its direction(s) datedhas asked the petitioner to stop the operation of its unit with immediate effect ,to deposit Environmental Compensation (EC) amounting to Sum of Rupees Five Lakhs (INR 5,00,000/-) Only within Fifteen (15) days from the date of knowledge of the directions ie 05/07/2019 ,to Respondent No.3 ie.....to disconnect the electricity supply to the unit of the Petitioner ,to Respondent No.4 ieto disconnect the water supply to the unit of the Petitioner with immediate effect and to Respondent No.5 ieto take necessary action to ensure effective closure of the Petitioners’ unit.

3. That the factual matrix /background leading to the filing of present Petition are as follows:

i. That the Petitioner herein is a Proprietorship Concern engaged in the activity of the farm house.

ii. That the Petitioner applied for Consent to Establish (CTE) vide Enquiry Counter ID No.datedwhich was granted onCopy of email whereby Consent to Establish (CTE) was granted is annexed and marked as **Annexure P-2.**

iii. That the Petitioner herein was issued show cause Notice datedvide F.No.for

operating its unit without obtaining the Mandatory Consent to Operate (CTO) under the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 .Copy of Show Cause Notice datedvide F. No.is annexed and marked as **Annexure P-3.**

iv. That the Petitioner replied to the Show Cause Notice vide letter dated 13/06/2019.Copy of Reply dated 13/06/2019 is annexed and marked as **Annexure P-4.**

v. That Petitioner replied to the direction(s) datedvide reply dated.....Copy of the reply datedis annexed and marked as **Annexure P-5.**

vi. That direction(s) datedvide F. No.passed by the Pollution Control Committeeare composite ie issued under Section 33(A) of Water (Prevention & Control of Pollution)Act,1974 and Section 31(A) of Air (Prevention & Control of Pollution) Act,1981 since the former is appealable U/s 33(B) of Water (Prevention & Control of Pollution)Act,1974 whereas the latter is not appealable hence the exercise of Writ Jurisdiction as has been held by Hon'ble Supreme Court of India in Tamil Nadu Pollution Control Board Vs Sterlite Industries (I) Ltd & Ors Civil Appeal No.4763-4764 of 2013 dated 18/02/2019.

vii. That Aggrieved at the hands of the Respondent(s) the Petitioner is left with no other efficacious remedy, other

than that to approach this Hon'ble Court in exercise of its Writ Jurisdiction.

4. That the present Writ Petition is being filed by the Petitioner(s) inter-alia on the following grounds:

GROUND

- i. Because the Petitioner applied for the Consent to Operate (CTO) vide its application datedwhich was duly received by Respondent No.2 ieonwhich was registered as Application No..... .Copy of application datedis annexed and marked as **Annexure P-6** ,copy of status of application no..... onis annexed and marked as **Annexure P-7** and copy of Application Form filled by the Petitioner is annexed and marked as **Annexure P-8** respectively.
- ii. Because as per Section 25(7) of the Water (Prevention & Control of Pollution)Act,1974 consent referred to in Sub-section (1) shall ,unless given or refused earlier ,be deemed to have been given unconditionally on the expiry of a period of four (4) months of the making of an application hence the Petitioner has been given deemed consent.
- iii. Because the Petitioner has not been communicated any decision by Respondent No.2 iefor four (4) months after applying ,the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to operate has been granted .If thereafter Respondent No.2 iefinds that any activity in the building which has already been constructed attracts

the provisions of the Water Act then it will have to proceed in accordance with other provision(s) of the Act to prevent or control such polluting activity and Section 25(1) of the Water (Prevention & Control of Pollution) Act, 1974 cannot be enforced if the Respondent No.2 iehas allowed the four (4) months time period after making the application by the Petitioner.

iv. Because the penalty amounting to Sum of Rupees Five Lakhs (INR 5,00,000/-) Only as Environmental Compensation (EC) on the Petitioner by the Respondent No.2 ie..... is non-est in the statute and hence is ultra-vires in the light of the decision of the apex Court in case of Khemka & Co. (Agencies) Pvt Ltd & Ors Vs State of Maharashtra & Ors where it was held that liabilities in the nature of compensation must be created by clear, unambiguous, and express enactment. The language used should leave no serious doubt(s) about its effects so that the persons who are to be subjected to such a liability for the infringement of law are not left in a state of uncertainty as to what their duties or liabilities are.

v. Because there is no specific provision in the Water (Prevention & Control of Pollution) Act, 1974 or Air (Prevention & Control of Pollution) Act, 1981 empowering theto levy penalties, fines or environmental damages and hence no such direction can be issued by the Respondent No.2 ie, much less the Consent Management Cell (CMC), in exercise of general powers to issue direction(s) U/s 33(A) of Water (Prevention & Control of Pollution) Act, 1974 and U/s

31(A) of Air (Prevention & Control of Pollution) Act, 1981.

vi. Because the Petitioner herein was not issued any issue notice in Form XIV before the alleged inspection of the Farm House was carried out on in contravention of Clause 33 (2) of The Water (Prevention & Control of Pollution) Rules,1975 thereby Petitioner having no opportunity to furnish facilities as may be required by the Concerned officer.

vii. Because the Petitioner has not been given an opportunity of atleast fifteen (15) days to file the objection(s) to the direction(s) issued by the Respondent No.2 ieU/s 33 (A) of the Water (Prevention & Control of Pollution) Act,1974 with the designated officer in contravention of Clause 34(3) of The Water (Prevention & Control of Pollution) Rules,1975 which is in violation of principle of “audi alteram partem” as has been held by the Hon’ble National Green Tribunal (NGT) in the matter of M/s Narayan Polishing Vs Delhi Pollution Control Committee (DPCC) decided on 10/12/2015.

viii. Because Hon’ble National Green Tribunal (NGT) vide its order datedin OA No...../..... titled as “Westend Green Farms Society Vs Union of India & Ors” held in Para 6 that :

“we are unable to understand how without any reference to such statutory scheme ,a provision for penalty can be made and how an ad-hoc amount can be provided without reference to the assessment of the loss caused,

cost of restoration being assessed and the amount being deterrent having regard to financial capacity of the persons violating the environmental norms. On this aspect ,the policy does not seem to have any clarity.” with the Next Date of Hearing Scheduled on.....Copy of the order datedin OA No.../..... titled as “Westend Green Farms Society Vs Union of India & Ors” is annexed and marked as **Annexure P-9.**

- ix. Because the direction(s) datedvide F. No.passed by the Respondent No.2 ie Pollution Control Committeesuffers from basic lacuna of no reasons being recorded and the same being passed without application of mind .
- x. Because the Respondent No.2 iefound the STP to be in working condition and non-operative indicates that there is no pollution being caused due to the activity being carried out at the farm house of the Petitioner.
- xi. Because the finding of the Respondent No.2 iethat there was dry-sludge found at the premises of the Petitioner is contradictory to the fact that STP was non-operative since by-product of sewage treatment is a semi-solid waste or slurry called sewage sludge .
- xii. Because sludge drying is carried out by eliminating water content so that it reduces the weight & volume of the sludge making it easier to store & transport . Drying enables the minimum dry content levels to be reached which increases the calorific value of the sludge for incineration.

- xiii. Because the closure of business unit of the Petitioner will affect his fundamental right to livelihood under article 21 of the Constitution and right to do business under article 19 of the Constitution.
- xiv. Because the daily wage labourers relying solely upon the Petitioner for their livelihood will be unemployed without any alternate means to support their families.

PRAYER

In the light of the above mentioned facts, Petitioner most humbly prays that this Hon'ble Court may kindly be pleased to grant the following relief(s):

- a. Issue an Order or Direction in the nature of Writ of Mandamus to the Respondent No.2 ie Pollution Control Committee to set aside the direction(s) datedissued vide F. No.....;
- b. Issue an Order or Direction in the nature of Writ of Mandamus to the Respondent No.3 ieto not take any co-ercive action in the nature of disconnection of electricity of the Petitioner;
- c. Issue an Order or Direction in the nature of Writ of Mandamus to the Respondent No.4 ie..... to not take any co-ercive action in the nature of disconnection of water supply to the Petitioner;
- d. Issue an Order or Direction in the nature of Writ of Mandamus to the Respondent No.5 ieto not take any co-ercive action in the nature of sealing the unit of the Petitioner;
- e. Pass any other order or direction which this Hon'ble Court may deem fit in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

PETITIONER

THROUGH

NITINYAYA LAW OFFICES

Advocate(s) for the Petitioner

Chamber No.103, New Lawyers Chambers

C.K Daphtary Block, Supreme Court of India

New Delhi-110001

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NEW DELHI

Dated:.....

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WP (C) No. OF 2019

IN THE MATTER OF:

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VERSUS

State

....RESPONDENTS

AFFIDAVIT

IS/o ShriR/o(address)..... , aged
.....years, do hereby solemnly affirm and declare as under:

1. I say that I am the Proprietor of....., the Petitioner in the above captioned Petition and well conversant with the facts and circumstances of the case and is competent to depose the present affidavit.
2. I say that the accompanying Petition has been drafted by my counsel on my instructions, contents whereof are true and correct to my knowledge and the same may kindly be read as part and parcel of present Affidavit which for the purposes of brevity are not being reproduced herein.

DEPONENT

VERIFICATION:

Verified at New Delhi on this ...th day of July 20..., that the contents of the above affidavit are true to my knowledge, nothing is false and nothing material has been concealed therefrom.

DEPONENT

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL ORIGINAL JURISDICTION)**

CM No. OF 2019

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IN THE MATTER OF:

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State

....RESPONDENTS

APPLICATION UNDER SECTION 151 OF CODE OF CIVIL PROCEDURE, 1908, AS AMENDED FOR SEEKING EX-PARTY AD INTERIM STAY ON THE OPERATION OF THE DIRECTION(S) DATED 01/07/2019 BY THE RESPONDENT No.2.

MOST RESPECTFULLY SHOWETH:-

1. That the present Writ Petition is being preferred on behalf of the Petitioner against the arbitrary and manifestly unjust order passed by the Respondent No.2 for the closure of business unit of the Petitioner.

2. That it is stated that the Petitioner became aware of the Impugned direction(s) datedon.....The said direction(s) have been passed without applying mind to the reply datedfiled in lieu of the Show Cause Notice dated.....Not only the Petitioner is

directed to close its business unit but also Respondent No. 3 is directed to disconnect the electricity connection ,Respondent No.4 is directed to disconnect the water supply and Respondent No.5 is directed to seal the business unit of the Petitioner.

3. That the Petitioner in view of the said direction(s) is incapacitated in doing business which is affecting his right to livelihood and right to do business.
4. That there exists a clear *prima facie* case against Constitutional validity of the impugned direction(s) passed by Respondent No.2 .
5. That the Petitioner submits that the Impugned direction(s) are liable to be set aside on the averments, grounds and submissions made in the accompanying Writ Petition which may be read as a part and parcel of this application and are not being repeated herein for the sake of brevity and to avoid prolixity.
6. That in the circumstances aforesaid, the Petitioner submits that he is entitled to the final, interim and ad-interim reliefs claimed herein.

PRAYER

It is, therefore, most respectfully prayed that in the facts and circumstances explained above, this Hon'ble Court may be pleased to grant the following reliefs in favour of the Petitioner and against the Respondents as under:-

- a) Stay the operation and implementation of the Impugned direction(s) dated.....; and/or
- b) Restrain the Respondents, whether through its servants, agents, officers or otherwise whomsoever, from, in any manner, taking any steps or actions, coercive or otherwise, against the Petitioner; and/or
- c) Grant ad-interim stay in terms of (a) & (b) above;

d) Pass any other and further order as this Hon'ble Court may deem fit, just and proper in the light of present facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE HUMBLE PETITIONER AS
IN DUTY BOUND SHALL EVER PRAY.

PETITIONER

THROUGH

NITINYAYA LAW OFFICES

Advocate(s) for the Petitioner

Chamber No.103, New Lawyers Chambers

C.K Daphtary Block, Supreme Court of India

New Delhi-110001

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IS/o ShriR/o.....(address).....,
aged years, do hereby solemnly affirm and declare as under:

1. I say that I am the Proprietor of....., the Petitioner in the above captioned Petition and well conversant with the facts and circumstances of the case and is competent to depose the present affidavit.
2. I say that the accompanying application has been drafted by my counsel on my instructions, contents whereof are true and correct to my knowledge and the same may kindly be read as part and parcel of

present Affidavit which for the purposes of brevity are not being reproduced herein.

DEPONENT

VERIFICATION:

Verified at New Delhi on thisth day of July 20..., that the contents of the above affidavit are true to my knowledge, nothing is false and nothing material has been concealed therefrom.

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IN THE MATTER OF:

....PETITIONER

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....RESPONDENTS

APPLICATION UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 AS AMENDED FOR EXEMPTION FROM FILING FAIR/TYPED COPIES OF DIM COPIES WITH PROPER LEFT SIDE MARGIN OF ANNEXURES

MOST RESPECTFULLY SHOWETH:

1. That the present Writ Petition is being preferred on behalf of the Petitioner against the arbitrary and manifestly unjust direction(s) passed by the Respondent No.2 iefor the closure of business unit of the Petitioner.
2. That the contents of the accompanying Writ Petition may be read as part and parcel of the present application and the same are not being repeated for the sake of brevity.

3. That the Petitioner is filing certain annexures, along with the accompanying petition, certified copies of which are not readily available with the Petitioner and since there is urgency in getting the accompanying petition listed for hearing thus, the present application, seeking exemption from filing certified copies of the annexures is being filed.
4. That along with the accompanying Petition the Petitioner is filing certain annexures, true typed copies of which are not readily available with the Petitioner and since there is urgency in getting the accompanying petition listed for hearing thus, the present application, seeking exemption from filing true typed copies of the annexures is being filed.
5. That the Petitioner undertakes to file the certified/ legible and typed copies of dim annexures at a later stage as and when directed by this Hon'ble Court.
6. That the Petitioner has got a good prima facie case and is likely to succeed.
7. That great prejudice shall be caused to the Petitioner if the present Application seeking exemption is not allowed by the Hon'ble Court.
8. That the balance of convenience lies in favour of the Petitioner and against the Respondent(s).

PRAYER

It is therefore humbly prayed that this Hon'ble Court may be pleased to:

- a. Exempt the Petitioner from filing certified/ dim/ legible/ typed copies of the annexures; and/or
- b. Pass any other and further order as this Hon'ble Court may deem fit, just and proper in the present facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE HUMBLE PETITIONER AS
IN DUTY BOUND SHALL EVER PRAY.

PETITIONER

THROUGH

NITINYAYA LAW OFFICES
Advocate(s) for the Petitioner
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annexures has been drafted by my counsel on my instructions, contents

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Verified at New Delhi on thisth day of July 20., that the contents of the above affidavit are true to my knowledge, nothing is false and nothing material has been concealed therefrom.

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