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Pollution Control Board Vs. Jadav Shop Works and ors.

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Court : Guwahati

Decided On : Mar-31-2004

Judge : P.P. Naolekar, C.J. and Ranjan Gogoi, J.

Acts : Air (Prevention and Control of Pollution) Act, 1981 - Sections 2, 21 and 31A

Appeal No. : W.A. No. 360 of 1999

Appellant : Pollution Control Board

Respondent : Jadav Shop Works and ors.

Advocate for Def. : B.R. Dey, Adv.

Advocate for Pet/Ap. : C. Baruah, Adv.

Disposition : Appeal dismissed

Judgement :

P.P. Naolekar, C.J.

1. By order/letter dated 16.2.1994 the industry of the respondents was closed down. The notices and the order of closure of the 'industry passed by the Pollution Control Board was challenged by filing a writ petition in the High Court. The order dated 16.2.1994 has been quashed by the learned Single Judge. Aggrieved by the said order the present appeal has been filed.

2. The submission of Mr. C. Baruah, learned counsel for the appellant is that the Pollution Control Board has authority to issue any order or direction in exercise of the powers under Section 31A of the Air (Prevention and Control Of Pollution) Act, 1981 and as the respondents did not comply with the provisions of Section 21 of the Act the Board has rightly directed closure of the industry.

3. A bare reading of the Section 31A makes it absolutely clear that the powers can be exercised by issuance of any direction, in the exercise of the Boards powers and performance of its functions under the Act, i.e., Air (Prevention and Control of Pollution) Act, 1981. The Board's authority and jurisdiction to issue directions under Section 31A imbibes from any breach of the respondents in performance of any provision of the Act. Section 21 says that subject to the provisions of Section 21, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area. By virtue of Section 21 the previous consent of the State Board is required to establish or operate any industrial plant in an air pollution control area. The industrial plant is defined under Section 2(k) of the Act, As per Section 2(k) the 'Industrial plant' means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere. Industrial plant for the purposes of the Act and particularly Section 21, would be a plant which is emitting any air pollutant into the atmosphere. Thus, for exercising powers under Section 31A it is necessary for the Board to reach to the conclusion that the plant is emitting any air pollutant into the atmosphere, Unless and until the basic finding is arrived at, the plant would not be an Industrial plant' within the meaning of Section 2(k) of the Act. In the present case no such finding has been arrived at by the Pollution Control Board and, therefore, exercise of the powers Under Section 31A of the Act, on the ground that the respondents have not complied with the provisions of Section 21, is without any jurisdiction and authority.

4. For the aforesaid reasons, we do not find that any case is made out for interference. The appeal is dismissed.

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