9BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

APPEAL NO. 22 of 2013

In the matter of :

Gurdev Singh
Resident of House No. 4256/3
Street No. 4, Shimlapuri, Gill Road, Ludhiana

.....Appellants

Versus

1. Punjab Pollution Control Board
   Through its Chairman, Chandigarh,
   Punjab

2. Punjab Pollution Control Board Zonal Office
   Through its Senior Environmental Engineer,
   Gill Road, Ludhiana Punjab

3. Sohan Singh, House No.4247, Street No.4, Shimlapuri, Gill Road,
   Ludhiana Punjab

4. The Punjab State Electricity Board
   Through its Secretary,
   Patiala Punjab

.....Respondents

Counsel for Appellants:

Mr. Ajay Kumar Chopra, Advocate

Counsel for Respondents:

Mr. Ashish Verma and Mr. Amrik Singh Advocates for Respondent No.1 and 2.
Mr. Manoj Khanna , Advocates, for Respondent No.3
Mr. Ashish Jain, Advocate, for Respondent No. 4.

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Dr.G.K. Pandey (Expert Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated : May 23rd, 2013

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

1. The Punjab Pollution Control Board (for short "the Board") on 13th June, 2003, in exercise of its powers vested under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981, (for short 'the Act') while issuing different directions, also directed the appellant to stop operating all its outlets and stop forthwith discharging any emissions from its industrial premises into environment while operating in the residential area. The relevant part of the order dated 13th June, 2003 reads as under:

> "Whereas it is mandatory on the part of the industry to obtain the consent of the Board to establish u/s 21 of the Air (Prevention & Control of Pollution) Act, 1981, as amended in 1987 before establishing the industry.
>
> Whereas it is mandatory on the part of the industry to obtain the consent to operate of the Board u/s 21 of the Air (Prevention & Control of Pollution) Act, 1981, as amended in 1987 before operating the industry.
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> Whereas it is mandatory on the part of the industry to provide adequate and appropriate air pollution control devices to control the noise/air emissions from its industrial premises to bring down within the permissible limits prescribed by the Board.
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> And whereas the industry has been established in the residential area without the prior "consent to establish" (NOC) of the Board.
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> And whereas industry has failed to obtain the consent to operate of the Board u/s 21 of Air (Prevention & Control of Pollution) Act, 1981, as amended in 1987 and is illegally operating in the residential area.
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> And whereas industry has obtained the power connection from the Punjab State Electricity Board in a residential area

without the clearance certificate from the Punjab Pollution Control Board.

And whereas Sh. Sohan Singh S/o Sh. Natha Singh filed a CWP No. 3902 of 2003 in the Hon'ble Punjab & Haryana High Court against Sh. Gurdev Singh for disconnection of power connection obtained by him on the basis of false affidavit.

And whereas as per order of the Hon'ble Court dt. 7.3.2003 Punjab Pollution Control Board has been directed to "**consider the legal notice/representation filed by the petitions and to decide the same in accordance with law by passing speaking order. The needful must be done within three months from the date of receipt of a copy of the said order**."

And whereas the industry was visited by the officers of the Board on 25.3.2003 and 10.6.2003 and observed that industry is creating noise level beyond the limits prescribed by the Board for the residential area.

And whereas the industry is violating the provisions of the Air (Prevention & Control of Pollution) Act, 1981 as amended in 1987.

And whereas industry was given an opportunity of show cause vide this office letter No. 622-23 dated 9.6.2003 and was heard in person on 11.6.2003. Sh. Gurdev Singh S/o Harnam Singh, owner of the unit, attended the hearing. During this hearing all these reports on noise pollution as well as the facts mentioned in CWP No. 3802 of 2003 were shared with the owner of the unit.

And whereas the owner has admitted to shift only the pollution generating machinery from the premises but did not accept that whole of its unit be closed as other similar units are also operating in the area.

The offer of the owner to shift only the pollution generating machinery from the current site is not acceptable to the Punjab Pollution Control Board as any industry cannot be allowed to operate in the residential area. But this is a polluting unit operating in the residential area in violation to the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act,

1981.

Keeping in view the statement of Assistant Environmental Engineer, Zonal Office, Ludhiana, Regional Office's reports and submission of owner of the unit, I, Birinder Jit Singh, Senior Environmental Engineer, in exercise of the powers conferred upon me u/s 31-A of the Air (Prevention & Control of Pollution) Act, 1981, as amended in 1987 direct you as following:-

1. That the industry will stop operating all its outlets and stop forthwith discharging any emissions from its industrial premises into environment while operating in a residential area.
2. Power connection of the unit M/s Panesar Products operating in residential area be got disconnected by issuing directions u/s 31-A of Air (Prevention & Control of Pollution) Act, 1981 to the Punjab State Electricity Board in this regard.
3. Regional Office should also initiate action against Mr. Sohan Singh, H. No. 4147, Street No. 4, Shimlapuri and any other similar unit established in the vicinity as well as in the residential area without NOC/clearance certificate of the Board.

In case you fail to comply with the above directions, you are liable for action u/s 37(1) of the Air (Prevention & Control of Pollution) Act, 1981, as amended in 1987."

2. The legality and correctness of the above order is challenged by the appellant in the present application, *inter alia,* but primarily on the following grounds:

(i) The impugned order is violative of the principles of natural justice. The appellant was not provided hearing and in any case adequate hearing, by the Board. Thus, the order is violative of the principles of natural justice.

(ii) There are a number of other units in the same vicinity (residential area) which are carrying on similar or other polluting businesses but no action has been taken against them. The appellant has been discriminated. As such, the order is arbitrary.

(iii) The appellant falls in the exempted category and is not required to take consent of the Board for carrying on its industrial activity.

The Board, in exercise of its powers, had issued a notification on 28th April, 1998 declaring the list of tiny small scale industries of 63 different types which were exempted from obtaining consent of the Board. The appellant falls under Entry No.39 of the list and the entire action of the Board and passing of the impugned order is without jurisdiction.

3. The above contentions arise out of the factual matrix, that the appellant claims to have established a small scale industry in the name and style of Panesar Products, which was carrying on the business of manufacturing of cycle parts. Amongst others, these parts included side supports, round and channel with clip to be used for kids' cycles. The appellant applied to the Board for obtaining its consent. Along with that the appellant also applied to the Municipal Corporation of Ludhiana for obtaining a no objection certificate. The officers of the Board advised the appellant that there was no necessity to grant no objection certificate to

him in view of the notification dated 28th April, 1998. It is also averred by the appellant that his unit was a non-polluting unit, not emitting any air or water pollutant, and even on that score, he was not required to obtain the consent of the Board. As far as the submission of the appellant to Ludhiana Municipal Corporation was concerned, the appellant claims to have submitted all necessary documents with affidavits and the said Corporation finally granted no objection certificate vide their letter dated, 23rd May, 1996.

Vide its notification, the Board has also categorised industries with reference to the investments made by the industry. The industries having investments of less than Rs.10 lakhs and not causing any pollution did not require consent of the Board. This also was further clarified by the Board vide its letter dated, 1st June, 1998 wherein the Board divided the industries under three different categories:

1) Red industries which were causing pollution and were industries of hazardous nature.

2) Green industries, and

3) Exempted industries.

4. The industries which fell in green category were the industries which were causing marginal pollution. Electrical connections to the industries,

which were marginally polluting, were granted without insisting upon the consent/no objection certificate from the Board. In furtherance to this decision, the appellant had applied for electrical connection from Punjab State Electricity Board. Subsequently, an electrical connection in favour of the appellant was released by the Electricity Board.

5. The industrial unit of the appellant is situated at House No. 4256/3, Street No.4, Shimlapuri, Gill Road, Ludhiana, which is a residential area. Near and around the unit of the appellant, a number of other industrial units are also functioning. The appellant has filed a copy of the site plan, showing other industrial units working in the same area, as Annexure P.3. The appellant's unit was neither emitting any pollution nor any complaint was made against the appellant though he was carrying on the business for almost 4-5 years. Because of personal differences, one Sohan Singh, Respondent No.3, herein, filed a false complaint against the appellant for causing noise pollution. Though the said respondent is also having an industrial unit, manufacturing locks and the said unit, it is contended, is causing more pollution than that of the appellant, still no action had been taken by the Board against Respondent No.3 while the appellant, vide notice dated, 9th June, 2003 was asked to appear before the Board on 10th June, 2003 on which date he appeared and

submitted an application that according to the order, the level of noise pollution is 64.3 db against the permissible limit of 55 db and prayed for more time to comply with the directions and to bring the noise level within the permissible limits. However, the Board was adamant and ordered the appellant to close the unit by 13th June, 2003. In the event of the appellant not complying with this order, the Electricity Board was directed to disconnect the electricity supply to the unit. In this manner, the appellant was neither granted adequate opportunity by the Board and their action was arbitrary and *malafide.*

6. It is also the case of the appellant that on 28th May, 2003, the officials of the Board visited his premises and found that only small machines like power press, small press, surface grinder, press grinder and drill machine were working and there was no machinery in operation which was creating extraordinary noise. The appellant claims that for the above reasons, the impugned order is arbitrary, violative of the principles of natural justice, that the Board has passed the order dated 13th June, 2003 at the behest of Respondent No.3 and that the appellant's industry falls in the exempted category. Therefore, the impugned order ought to be set aside and directions issued by the Board as well as other Departments need to be quashed.

7. First and foremost, we may deal with the contention in regard to violation of principles of natural justice. From the above narrated facts, it cannot be disputed that the Board had issued a notice to the appellant on 9th June, 2003 requiring him to appear before the Board on 10th June, 2003. In that notice, it was specifically stated *inter alia* that the industry was visited by the officers on 25th March, 2003 and the noise level of the industry was monitored. It was observed that the noise level was beyond the limits prescribed by the Board for the residential area. The notice clearly stipulated that the industry should obtain the consent of the Board in terms of Section 21 of the Act and it was mandatory for the appellant to provide adequate and appropriate air pollution control devices to control the noise/air emissions from its industrial premises so as to bring them down within the permissible limits prescribed by the Board. Even reference to the complaints made against the appellant was mentioned. This itself provided an opportunity to the appellant to file objections, if any, and also stated as to what directions were contemplated to be passed against the appellant. The appellant appeared before the Board on that date and even filed objections. In his application, the appellant raised the above ground and in fact admittedly prayed for time to install air and noise pollution control devices to bring

down the respective pollution levels. This case is even pleaded by the appellant in his application afore referred. In the impugned order, the Board had specifically noticed that during the hearing, all the reports on noise pollution as well as averments made in Writ Petition No.3802/2003 were shared with the owner of the unit. During the hearing, the appellant had admitted to shift only the pollution generating machinery from the premises in question but not wholly as other similar units were also operating in the area. The principles of natural justice are certainly applicable to such proceedings. In fact, the provisions of the Act specifically require and contemplate that an opportunity shall be provided to the appellant before any order adversely affecting his rights are passed by the Board. Natural justice does not have absolute application. It is to be examined on the facts of a given case.

In the case of *Union of India v. Tulsiram Patel* (1985) 3 SCC 398, a Constitution Bench of the Supreme Court stated:

"that the question whether requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions."

8. Thus, we have to examine whether the principles of natural justice have been violated in the present case. The premises of the appellant were inspected on 25th March, 2003 which means that the appellant knew that his unit was violating the prescribed parameters of noise pollution. Thereafter, the notice dated 9th June, 2003 was served upon him to appear before the Board on 10th June, 2003 when he admittedly appeared and filed his objections. From the objections filed and from the record before us, it is clear that the appellant practically admitted the violation of the prescribed standards of noise pollution. It was expected of the appellant to install air and noise pollution control devices from the month of March, 2003 when it was detected by the officers of the Board on 25th March. However, he took no steps. We are not prepared to hold that in the facts of the present case, the appellant was not granted appropriate opportunity to put forward his case. On the contrary, he has practically admitted the case of the Board and wanted time to rectify the defects. There is nothing on record to show that even upto the present date, the appellant has installed noise and air pollution control devices. Such inaction on the part of the appellant, despite the benefit of being granted interim stay, even reflects on the conduct of the appellant. It is a settled rule of principles of natural justice that one who claims relief in

equity must not only do equity himself but should also discharge his statutory obligations and comply with the requirements of law. Thus, we reject the contention raised on behalf of the appellant that there is any violation of natural justice.

9. Now, we would proceed to take up the third contention afore-referred, as advanced by the applicant, before deliberating upon the second contention. For its proper appreciation it will be more appropriate to dissect this contention into the following two parts:

a. Whether the Board has power and authority in law under the provisions of the Act to exempt any Unit from the applicability of Section 21 and other provisions of the Act.

b. If the above is answered in the affirmative, even then, whether the unit of the applicant falls under any of the entries of the stated 'exempted list'.

10. With the increasing industrialization and the tendency of the majority of industries to congregate in areas which are already heavily industrialized, the impact of the problem of air pollution has begun to be felt in the country. The presence in air, beyond certain limits, of various pollutants discharged from certain human activities including industrial emissions as well as traffic, heating, use of

domestic fuel, incinerations etc. obviously had a detrimental effect on the health of the people and even on animal life, vegetation and property. Air pollution is more serious than any other form of pollution due to the following facts:

(i) All living creatures, including human beings, consume much larger quantity of air than any other resources from nature. For example, on an average an adult man consumes about 17 kg. of air in a day. No other matter, in such a high quantity is consumed by man in a day. Thus, even very little contamination of air will expose the living beings to a high dose of air pollutants.

(ii) If air is polluted, nobody can escape it. However, if water is dirty, one can easily avoid to drink it and similarly if food is contaminated, one can avoid consuming the same. But if air is polluted, no one can avoid inhaling it, even if one knows that he is going to die if he breathes such contaminated air. As happened in Bhopal during the famous gas episode, large number of animals, birds, plants and human beings died during that tragedy.

Thus, air pollution has to be viewed more seriously in order to protect the environment and all living beings. With these objects in mind, the legislature in its wisdom had enacted the Act to provide for

prevention, control and abatement of area pollution. India was also bound by its participation in the United Nations Conference on the Human Environment, Stockholm, 1972 to take appropriate steps for the preservation of the natural resources of the earth which, among others things, include the preservation of quality of air and control of air pollution. Once the object and preamble to the Act are examined with interpretative objectivity, it is obvious that every industrial unit which caused emissions was required to take consent of the Board. Not only this, the framers of law used explicit language to show that there was an imposed restriction on establishing or operating any industrial plant in the air pollution control area. The State Government, after consultation with the State Board, was required to notify and declare the air pollution control areas for the purposes of this Act. These areas were subject to extension or reduction in terms of the provisions of Section 19 of the Act. The Board, under Section 22 of the Act, was specifically empowered to lay down standards of emission as well as to issue such instructions as may be necessary for any person operating an industrial plant. This power, more particularly, in relation to automobiles was conferred upon the Board in terms of Section 20 read with Section 17 (1)(g) of the Act. At this

stage, it will be appropriate to refer to the provisions of Section 17 and 21 of the Act, which will have a considerable bearing on the matters in issue before us in this application:

> **"17. Functions of State Boards.**
> (1) subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), the functions of a State Board shall be-
> (a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof-,
> *(b)* to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;
> (c) to collect and disseminate information relating to air pollution;
> (d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;
> (e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;
> (f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;
> (g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into

the atmosphere from any other source whatsoever not being a ship or an aircraft:
Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;
(h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;
(i) to Perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;
(j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.
(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

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21. Restrictions on use of certain industrial plants.

[(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area :
Provided that a person operating any industrial plant in any air pollution control area, immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.]
(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed 'and shall be made in the prescribed form and

shall contain the particulars of the industrial plant and such other particulars as may be prescribed :

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, *** such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused,

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, [and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse consent:]

[Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned.]

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely -

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;
(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;
(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises; .and
(v) such other conditions as the State Board, may specify in this behalf,
(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf-
Provided that in the case of a person operating any industrial plant *** in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months :
Provided further that-
(a) after the installation of any control equipment in accordance with the specifications under clause (i), or
(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or
(c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-created except with the previous approval of the State Board.
(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally."

11. Section 17 of the Act declares that subject to provisions of the Act and without prejudice to the performance of its functions under the Water (Prevention and Control of Pollution) Act, 1974, the functions of the State Boards are stated in clauses (a) to (j) of sub-Section (1) to Section 17. It is apparent that none of these clauses specify the functions to be performed by the Board while specifically empowering it to exempt an industry from being established or operate without consent of the Board. Reliance has been placed upon Section 17(1)(j) of the Act. This is a kind of residuary power that is vested in the Board to do things or to perform such other acts as it may think necessary for the proper discharge of its functions and generally for carrying into effect the object of this Act. By the plain language of this provision it is clear that the functions or powers vested in the Board by virtue of the residuary clause can be exercised only for two purposes, i.e. for the purposes of proper discharge of its functions and for carrying into effect the purposes of

this Act. Performance of any act by the Board, thus, must fall within these two clauses, otherwise the Board will have no power to perform that act. The residuary power clause can be brought into service only in consonance with the above purposes and in any case it cannot be exercised to perform an act, which will be in conflict with the provisions, purpose or object of the Act itself. No act can be performed and no power can be exercised which would lead to a conflict with any of the provisions of the Act. Like, it is a settled tenet of civil jurisprudence that a court cannot exercise inherent powers in derogation to the specific provisions of a statute/Code. It is always with the intention to aid the implementation of the specific provisions of an Act that such inherent or residuary powers can be resorted to.

12. In the present case, Section 21 opens with the negative language, 'no person shall, without the previous consent of the State Board, establish or operate, any industrial plant in an air pollution control area'. This restriction is complete in itself except to the extent that the existing industries were permitted to continue for a limited period to enable them to obtain consent of the Board and till such applications were pending. Rest of the provisions of Section 21

deal with the procedure, manner and imposition of conditions, while granting or refusing the consent. The legislature in its wisdom has carved out no exception to the rule that there could be no establishment or operation of the industrial units in the air pollution control areas except with the consent of the Board. Once the substantive provisions provide for no such exceptions and Section 20 does not specifically empower the Board to carve out exceptions by providing exemptions, it is impermissible to contend that with the aid of the residuary clause, Section 17(1)(j), such statutory restrictions could be relaxed or exceptions could be carved out thereto by implication. The doctrine that general things do not derogate from specific things (*generalia specialibus non derogant)*, clearly implies that the general power contained under Section 17(1)(j) cannot be taken to have an overriding effect over specifically stated functions of the Board and thus, is in clear derogation to Section 21(1) of the Act. It is equally a settled preposition of law that special provisions will control the general provisions while *vice versa* is not true. To see it in the light of our Constitutional scheme, we may refer to Article 14 which is a general provision relating to all kinds of laws and all kinds of persons while Article 310 deals with a

special or particular matter namely 'government servants and their termination of services' thus, article 310, being specific, would override the provisions of Article 14, as far as possible. It is clear that Section 21 is the soul of the Statute and is the most significant provision keeping in view the preamble, objects and reasons of the Act. Thus, to further the cause of the Act, it is absolutely essential to permit operation of Section 21 without any legal impediments resulting from exercise of residuary powers under the provisions of the Act.

13. While interpreting the statutory provisions, the courts normally avoid to adopt an interpretation which would tantamount to adding words to the language of a provision. The courts or tribunals generally refrain from entering into the realm of legislation. By interpretation they would not read such words into the provisions, which would result in defeating the very scheme of the Act and its very object. Such a proposition can be examined from another point of view that whenever there is an omission by the legislature of a word or language in a provision, it is also for a reason. Normally, such omission can be remedied only by a legislative act unless the very purpose of the Act and the provisions

would stand defeated but for adding or reading into the provisions of such Act. Under the principle of *casus omissus*, that which should have been but has not been provided for in a statute, cannot be supplied by the courts, as to do so will be 'legislation' and not 'construction'. Of course, such a rule is not free of exceptions (*Unique Butyle Tube Industries Pvt. Ltd. v. U.P. Financial Corporation and Ors.* (2003) 2 SCC 455).

14. More than often, courts and tribunals adopt the principle of plain interpretation. The intention of the legislature is primarily to be gathered from the language used which means that the attention should be paid to what has been said as also to what has not been said. (*Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests* AIR 1990 SC 1747).

15. A three judge Bench of the Supreme Court in the case of *Harshad S. Mehta and Ors. v. The State of Maharashtra* (2001) 8 SCC 257 held as follows:

> "32. The contention further is that the deficiency in the Act, if any, cannot be provided by the court particularly when the language is plain and simple and the assumed gaps cannot be filled by the court and that the wilful omission made by the legislature has to be respected by the court. On the legislature wilfully omitting to incorporate something of an analogous law in a

subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the court is not competent to supply the omission under the guise of interpretation by analogy or implication, something what it thinks to be a general principle of justice and equity, reliance has been placed upon *The Commissioner of Sales Tax, U.P., Lucknow v. M/s. Parson Tools and Plants, Kanpur* [1975]3SCR743 , *Lord Howard De Walden v. Inland Revenue Commissioners* 1948 (2) All E.R. 828, *Johnson & Anr. v. Moreton* 1978 (3) All E.R. 37 and *Harcharan Singh v. Smt. Shivrani & Ors.* [1981]2SCR962 . The contention is that any interpretation by this court other than the one propounded would be entrenching upon the power of legislature. On the principles of interpretation on detail consideration of various decisions of this court and courts of other countries, in *S.P. Gupta & Ors. etc. v. Union of India & Ors. etc. etc.* [1982]2SCR365, a Bench of seven judges said:

"But there is one principle on which there is complete unanimity of all the courts in the world and this is that where the words or the language used in a statute are clear and cloudless, plain, simple and explicit unclouded and unobscured, intelligible and pointed so as to admit of no ambiguity, vagueness, uncertainty or equivocation, there is absolutely no room for deriving support from external aids. In such cases, the statute should be interpreted on the face of the language itself without adding, subtracting or omitting words therefrom (para 197).

Where, however, the words or expressions used in the constitutional or statutory provisions are shrouded in mystery, clouded with ambiguity and are unclear and unintelligible so that the dominant object and spirit of the legislature cannot be spelt out from the language, external aids in the nature of parliamentary debates, immediately preceding the passing of the statute, the report of the Select Committee or its Chairman, the Statement of

> Objects and Reasons of the statute, if any, or any statement made by the sponsor of the statute which is in close proximity to the actual introduction or insertion of the statutory provision so as to become, as it were, a result of the statement made, can be pressed into service in order to ascertain the real purport, intent and will of the legislature to make the constitutional provision workable. We might make it clear that such aids may neither be decisive nor conclusive but they would certainly assist the courts interpreting the statute in order to determine the avowed object of the Act or the Constitution as the case may be. (para 271 (2))."
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> 33. On the principles of interpretation, we have no difficulty in accepting the contentions of Mr. Jethmalani but the question is about the applicability thereof."

16. While framing and elaborating the powers and functions of the Board under Section 17 of the Act, the legislature in its wisdom has dealt with even minute details of the functions to be performed by the Board, like the power of inspection, to collect and disseminate information, to advice the Government and to collaborate with the Central Government on various issues to lay down the guidelines. Thus, it cannot be said that an omission to empower the Board with a significant power to exempt industries from operation of the provisions of the Act was an unintended omission on behalf of the Legislature. It can be illustratively dealt with by reference to the provisions of Section 19 of the Act where it is the duty of the State Government to declare air pollution control areas and then a specific

power is further vested in the Government to extend or reduce this area by exercise of such power. In contradistinction to this, the provisions of the Act are completely silent in regard to the vesting the Board with the authority to exempt units from the operation of Section 21 of the Act. The Board is not vested independently with any legislative power, except the ones specified in the Act. The power to exempt or exclude has to be specifically provided. It is incapable of being simply inferred. In the case of implied exclusion, the legislative intent has to be definite and certain. In that case, it must be held by the court that any other view would frustrate the object or purpose of the Act. In the case of *Union of India vs. Alok Kumar* (2010) 5 SCC 349, the Supreme Court while dealing with service rules relating to the railway employees clearly took the view that exclusion has to be specific while holding as under: -

> "41. It is a settled principle of interpretation that exclusion must either be specifically provided or the language of the rule should be such that it definitely follows by necessary implication. The words of the rule, therefore, should be explicit or the intent should be irresistibly expressed for exclusion. If it was so intended, the framers of the rule could simply use the expression like 'public servant in office' or 'an authority in office'. Absence of such specific language exhibits the mind of the framers that they never intended to restrict the scope of 'other authority' by limiting it to the serving

officers/officials. The principle of necessary implication further requires that the exclusion should be an irresistible conclusion and should also be in conformity with the purpose and object of the rule.

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43. An exclusion clause should be reflected in clear, unambiguous, explicit and specific terms or language, as in the clauses excluding the jurisdiction of the court the framers of the law apply specific language. In some cases, as it may be, such exclusion could be read with reference to irresistible implicit exclusion. In our opinion the language of Rule 9(2) does not support the submission of the respondents. Application of principle of exclusion can hardly be inferred in absence of specific language. Reference in this regard can be made to the judgment of this Court in the case of *New Moga Transport Co. v. United India Insurance Co. Ltd.* AIR 2004 SC 2154."

17. The power to exempt from the operation of the provisions of the Act must be specifically provided in the statute itself or it must arise as a result of implied power which indisputably emerges from the scheme of the Act. Besides this, it should be in conformity with the purpose and objects of the Act. We have no doubt in our mind that the power to exclude or exempt any unit or industry is specifically neither provided under the provisions of the Act nor does it flow impliedly. On the contrary, exercising such power of exemption in relation to the provisions of the Act, particularly in face of the language of Sections 21 and 17 of

the Act would neither be permissible nor possible. It would hamper, and even frustrate, the object of the Act.

18. Similar provisions under the Noise Pollution (Regulation and Control) Rules, 2000 have been framed under the powers vested in the proper authority/Government under Sections 6 and 25 of the Environment (Protection) Act, 1986. The noise pollution is regulated by Rule 4 of the said rules, which states that the noise level in any area/zone shall not exceed the ambient air quality standards in respect of noise, as specified in the Schedule. There is no provision in the Act that empowers the Board to exempt any industry or unit from the operation of the Act. Absence of such specific power necessarily implies that every industry or unit, before it is established or becomes operative must obtain consent of the Board in terms of Section 21 of the Act.

19. In the light of this position of law, the Board could not have issued the notification dated 28th April, 1998, which, in fact, is only a resolution passed by the Board in its 97th meeting held on 3rd April, 1998. A bare reading of the resolution shows absence of authority or power to pass such resolution. This resolution does not refer to any provision of law of the Act or even the rules framed thereunder in exercise of which the Board is competent to prescribe for such

exemption. If the statute has not provided any provision in compliance to which a unit or industry could be granted exemption or falls outside the ambit of the provisions of the Act, then the Board cannot do so by an administrative instruction or resolution. *Quando aliquid prohibitur ex directo, prohibitur et per obliquum.*

If an industry is neither discharging any trade effluent nor emitting pollutant in the air or atmosphere including noise, then the Board can grant its consent without conditions, but the Board is not vested with the power of exempting industries from the operation of the Act. The limit of financial investment by a unit on its establishment, including plant and machinery, cannot, in any case, be a fair criterion for providing the stated exemption. This criterion appears to be without any application of mind. For instance, an electroplating unit may hardly have any investment in its plant and machinery but still can be a very highly polluting industry. Thus, an embargo relating to an investment of less than Rs.10 lakhs does not have any nexus to the object of the Act, i.e., prevention and control of pollution. As such, we must conclude that the notification dated 28th April, 1998 issued by the Board is without the authority of the law and, in fact, is in the teeth of Sections 21 and 17 of

the Act. Thus, we do hereby quash and set aside this notification for being contrary to law.

20. Still, another aspect of this case is that even if for the sake of arguments, it is presumed that the notification dated 28th April, 1998 is a valid notification in the eyes of law, even then the appellant does not fall within the ambit of the notification. This notification emanates from the resolution of the Punjab Pollution Control Board, whereby a list of 63 types of tiny/small industries, were exempted from obtaining the consent of the Board under the provisions of the Act. Firstly, we must notice that NOC is not a concept applicable to the provisions of the Act. The Act under Section 21 provides for obtaining consent of the Board to establish or operate an industrial unit. These industries or units should make an application for obtaining the consent of the Board. The Board has the discretion to grant consent, conditional consent or even refuse the consent. However, it is not vested with the power of exempting industries from complying with their statutory obligations under the provisions of the Act.

According to the appellant, he is covered under Entry No.39 of the list, which reads as under:

"39. Lathe and welding sets (only electrical) without casting."

21. It is now an undisputed case before us that the appellant does not carry on the business of lathe and welding sets (only electrical) without casting. In fact, the industry being run by the appellant causes noise as well as air pollution. The industry was inspected on two different occasions, i.e. on 25th March, 2003 and 10th June, 2003. It was noticed that the industry was causing noise pollution at a level beyond the limits prescribed by the Board for the residential area. It is also an admitted fact that the industry is located in a residential area.

22. Even as per the inspection conducted on 1st April, 2013, and the report submitted thereof, it was *inter alia* noticed that the industrial unit of the appellant, Mr. Gurdev Singh, was engaged in manufacturing of cycle parts. The relevant part of the said report reads as under:

- "The industry was in operation during visit.
- The industry is engaged in manufacturing of the cycle parts.
- The industry has installed 05 nos. presses of 05 ton capacity each, 01 no. press of 20 ton capacity, 01 no. press of 100 ton capacity, 01 no. grinder, 01 no. lathe machine and 03 no. drill machines.
- The industry has installed 01 no. DG set of 07 KVA capacity with adequate stack height but without canopy.
- The industry is not generating any trade effluent and only domestic effluent is generated which is being discharged into MC sewer.
- As per the representative of the industry, the bigger press is being operated as per demand of the market.

• The industry has not obtained NOC/consent to operate of the Board and is operating without the same.

• The premises of the Sh. Sohan Singh, the complainant, was also visited. He has installed 01 No. press of 05 ton capacity, 01 no. milling machine (small), 01 no. grinder, which were not in operation during visit due to ill physical conditions of the proprietor, as told by him. As per proprietor of the industry, he is manufacturing the spare part at the premises since 1982 and the area is residential area. However, no record (documentary proof) could be produced by him. He has not obtained NOC/consent to operate of the Board and is operating the industry without the same. The machinery of the complainant's premises was also got operated for the purpose of noise monitoring.

• Noise monitoring of the industry as well as complainant's own machinery was carried by taking out one by one in operation. The result of the noise monitoring is as under:

S. No.	Monitoring Location	Moni-toring Time	Noise Level leq dB(A)	
			When industry/ machinery in operation	When industry/ machinery not in operation
1	Inside the subject cited industry (when complainant's machinery was not in operation)	03.35 pm	77.6, 77.5	63.0, 62.8
2	At the main gate of the subject cited industry (when complainant's machinery was not in operation)	03.40 pm	74.0, 73.8	62.2, 62.1
3	Inside the complainant's house (when complainant's machinery was not in operation)	03.42 pm	73.3, 73.1	60.0, 59.7
4	Inside the machinery room of the complainant's house to check noise level of his own machinery (when	03.55 pm	75.1, 75.3	59.5, 59.3

	subject cited industry was not in operation)			

The contribution to noise level is above 10 dB (A). This is for your information and necessary action please."

23. From the above inspection report, it is clear that the unit of the appellant is not only having a lathe machine but also has presses, grinder and even a diesel generator set of 7 KVA capacity. All this is bound to result in air and noise pollution. The appellant is manufacturing cycle parts and thus cannot fall under Entry No.39 of the afore-referred list. Thus, in any case, the appellant has no case even on merits keeping in view the facts and circumstances of the present case.

24. As far as the plea of discrimination is concerned, the appellant cannot drive any benefit even if the allegations were taken to be correct. If others are polluting, that does not give right to the appellant to pollute. The industry of the appellant, on various occasions, has been found to be a polluting industry and causing annoyance and disturbance to the people living in the colony. Discrimination is no defence to an offence. However, the Board must take action against other air and noise polluting industries located in the same residential area. If Mr. Sohan Singh, the complainant, is running an industry, which is causing pollution, we direct the Board to take immediate steps to inspect the said

unit, and stop and prevent the pollution caused by his unit, if any, forthwith.

25. Having found no merits in any of the contentions raised on behalf of the appellant, we are left with no option but to dismiss the application of the appellant. The impugned order was served upon the appellant on 13th June, 2003. He had filed a Writ Petition in the High Court of Punjab and Haryana, which came up for hearing before that Court. Vide its order dated 24th June, 2003, the High Court stayed the operation of the impugned order dated 13th June, 2003. The said stay order continued till 2013 when the matter was ordered to be transferred to this Tribunal. During the pendency of the matter before the Tribunal, the said stay order was not specifically vacated. In these circumstances, while dismissing the application of the appellant, we would grant a period of two months to the appellant to shift his industry from the residential area in question or in the alternative to bring the air and noise pollution parameters strictly within the permissible limits and obtain consent of the Board within the said period. In the event of default of the aforesaid conditions, the impugned order dated 13th June, 2003 shall become operative and the appellant, Mr. Gurdev Singh, shall close his unit and

stop the industrial activity in the premises in question without any further opportunity.

26. For the reasons aforestated, we decline to interfere in the order of 13th June, 2003 and dismiss this application; however, leaving the parties to bear their own costs.

Justice Swatanter Kumar
Chairperson

Justice U.D. Salvi
Judicial Member

Dr. G.K. Pandey
Expert Member

Prof. A.R. Yousuf
Expert Member

Dr. R.C. Trivedi
Expert Member

New Delhi
May 23rd, 2013