

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 13<sup>TH</sup> DAY OF FEBRUARY, 2019**

**PRESENT**

**THE HON'BLE MR. L. NARAYANA SWAMY  
ACTING CHIEF JUSTICE**

**AND**

**THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR**

**WRIT PETITION NO. 58181/2018 (GM-POL)**

**BETWEEN:**

VINIR ENGINEERING PRIVATE LIMITED  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956, NO.102-104  
BOMMASANDRA INDUSTRIAL AREA  
BENGALURU-560 099  
REP BY ITS AUTHORIZED SIGNATORY  
MR. KANNAN P

... PETITIONER

(BY SRI ADITYA SONDHI, SENIOR ADVOCATE FOR  
SRI MAHESH A S, ADVOCATE)

**AND**

1. THE KARNATAKA STATE POLLUTION  
CONTROL BOARD, PARISARA BHAVAN  
1ST TO 5TH FLOOR, NO.49  
CHURCH STREET, BENGALURU-560 001  
REP BY ITS CHAIRMAN

2. M/S. SUPRAJIT ENGINEERING LTD  
NO.101, BOMMASANDRA INDUSTRIAL AREA  
HOSUR ROAD  
BENGALURU-560 099

REPRESENTED BY ITS MANAGER  
MR. SUSHAN SHETTY

... RESPONDENTS

(BY SRI D NAGARAJ, ADVOCATE FOR R-1;  
SRI S VIJAY SHANKAR, SENIOR ADVOCATE FOR  
SRI M SHIVAPRAKASH, ADVOCATE FOR C/R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED DIRECTION DATED 19.12.2018 ISSUED BY RESPONDENT NO.1 (ANNEXURE-A).

THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY, ACTING CHIEF JUSTICE MADE THE FOLLOWING:

**ORDER**

The petitioner has filed this writ petition seeking to quash the impugned order dated 19.12.2018 issued by respondent No.1 as per Annexure-A.

2. The petitioner is an industry engaged in the business of manufacturing die forgings and machine components. Respondent No.2 filed a complaint with the jurisdictional police alleging that the activities of the petitioner have been causing noise of high decibels and vibrations and on account of the same, cracks have developed in the building of respondent No.2. On the basis of the said complaint, the Regional Officer of the Karnataka State Pollution Control Board ('KSPCB' for short) inspected the premises and filed a report dated 12.03.2018. Thereafter, both the

petitioner and respondent No.2 were called for personal hearing. As per directions issued by KSPCB on 21.04.2018, petitioner got installed additional anti-vibration measures and reported compliance by a letter dated 06.08.2018 along with reports as per Annexure-E. In spite of the same, KSPCB has passed the impugned order directing the petitioner to close its industrial operations forthwith.

3. Shri. Aditya Sondhi, learned Senior Counsel for the petitioner submits that before passing the impugned order, the petitioner was not issued with any notice nor opportunity of hearing was provided before directing it to close operations of the industry. He further submits the petitioner has produced reports regarding ground vibrations as per Annexures-F and G, which reveal that noise and vibrations in petitioner's factory are within the prescribed standards. He also submits that the petitioner has taken additional measures to reduce noise and vibrations and in spite of the same, KSPCB has passed the impugned order, which is liable to be set aside.

4. On the other hand, Shri. D.Nagaraj, learned counsel for KSPCB supported the impugned order and prayed for dismissal of the writ petition.

5. Shri. S.Vijay Shankar, learned Senior Counsel for respondent No.2 submits that the writ petition is not maintainable as there is an alternative remedy provided under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 and there is also a remedy of appealing to the National Green Tribunal. Referring to the order passed by this Court dated 28.12.2018, learned Senior Counsel submitted that this petition has been directly filed in this Court since the Appellate Authority was not functioning and as the Appellate Authority has been constituted and it is functioning, this writ petition cannot be entertained.

6. We have heard learned counsel for the parties and gone through the papers available.

7. During the course of submissions, it is pointed out that the letter dated 06.08.2018 (Annexure-E) addressed by the petitioner to KSPCB reporting compliance has not been considered by the Board. If the said report was taken into

consideration, the Board would have taken altogether a different decision. There is also material on record to show that petitioner has taken additional measures to reduce noise and vibrations in its factory.

8. Though learned Senior Counsel for respondent No.2 submitted that the petitioner should be directed to avail the alternative remedy since the Appellate Authority has been constituted now, we are not inclined to do so since this petition is pending since 2018 and sufficient materials have been made available by learned counsel for the parties. Further, the letter addressed by the petitioner dated 06.08.2018 reporting compliance has not been considered by respondent No.1 while passing the impugned order.

9. In the circumstances, the impugned order dated 19.12.2018 (Annexure-A) is hereby quashed. The matter is remitted to KSPCB to consider the case of the petitioner afresh in the light of the compliance report dated 06.08.2018 (Annexure-E) and pass appropriate orders in accordance with law within two months from the date of this order.

10. The parties are directed to appear before KSPCB without awaiting for any notice, on 21.02.2019. They are also permitted to place relevant materials, if any, for consideration of the Board.

The petition is accordingly disposed of.

In view of disposal of the writ petition, the pending interlocutory applications do not survive for consideration and they are also disposed of.

**Sd/-  
ACTING CHIEF JUSTICE**

**Sd/-  
JUDGE**

bkv