(7)

Ann-A

OFFICE OF THE
DEPUTY COMMISSIONER
MALAKAND
No. 208-9 /ALC/DC/MKD
Dated: 11 /01/2017

To

1. The Assistant Director,
   Environmental Protection Agency Swat.
2. The Executive Engineer,
   (PESCO) Dargai.
3. The Executive Engineer,
   Irrigation Department Malakand.

Subject: **APPLICATION FOR THE GRANT OF NOC (MANSHA STEEL MILLS)**
Memo:

Reference to the application submitted by Noor ul Hassan r/o District Swabi, Managing Director of Mansha Steel Mills at village Kharkai Dargai. The applicant has produced a detail plan / map of the Mill approved by the TMA Dargai and lease agreement obtained on lease for 10-years for the above purpose.

You are therefore, directed to furnish your report/NOC pertaining to your department for further proceeding accordingly please.

DEPUTY COMMISSIONER
MALAKAND
10/01/17

No. 208-9.

Copy forwarded to the District Police Officer, Swabi with the request to verify antecedents of Noor ul Hassan s/o Hazrat Gul r/o Malak Abad District Swabi having CNIC No. 411040-167126-1.

DEPUTY COMMISSIONER
MALAKAND
10/01/17

C.T.C

(8)

OFFICE OF THE
TEHSIL MUNICIPAL ADMINISTRATION
DARGAI DISTRICT MALAKAND

T.M.A DARGAI

NO. 6491 /TMA/DARGAI
DATED DARGAI THE, 29/12/2016

To The Deputy Commissioner,
Malakand.

Subject: APPLICATION OF THE GRANT OF NOC (MANSHA STEEL MILLS)

Memo:

Kindly refer to the Deputy Commissioner Malakand letter No.1701-03/PSTDC/MKD dated 07th March 2016, on the subject cited above.

Enclosed please find herewith a case of Mr. Noor Ul Hassan R/O District Sawabi, Managing Director of MANSHA STEEL MILLS for grant of NOC at village Kharkai Dargai location as per attached Map covered area attested by the Tehsil Officer (I&S), Tehsil Municipal Administration, Dargai only for site plan.

It is further added that this office has approved their site plan as per Local Government Act 2013.

Tehsil Municipal Officer,
Tehsil Municipal Administration,
Dargai.

ATTESTED

C.T.C

(9)

OFFICE OF THE EXECUTIVE ENGINEER,

Phone No.0932-410492-MALAKAND IRRIGATION DIVISION MALAKAND

No: 127 /4-W

Dated Malakand the 30/01/2017.

To,

The Deputy Commissioner,
Malakand.

Subject:- APPLICATION FOR THE GRANT OF N.O.C (MANSHA STEEL MILLS).

Reference:- Your office letter No. 208-9/ALC/DC/MKD dated 11/01/2017.

In this connection it is submitted that the site of the applicant have been inspected by the Sub Divisional Officer Head Works irrigation Sub Division Malakand along with concerned Sub Engineer and report that there is no objection on the construction of Steel Mill beyond the Right way of Abazai Branch.

EXECUTIVE ENGINEER

Copy forwarded to the Sub Divisional Officer Head Works Irrigation Sub Division Malakand with reference to his U/ No.31 Dated 19/12/2016 for information.

EXECUTIVE ENGINEER

ATTESTED

C.T.C

(10)

No. 1677 Dated:- 31-01-2017

The Deputy Commissioner,
Malakand,

Subject:- APPLICATION FOR THE GRANT OF NOC (MANSHA STEEL MILLS)

Memo,

Please refer your office letter No: 209-09/Acc/DC/MKD dated 11.01.2017.

As per report of SDO PESCO Dargai-I vide his letter No. 1474 dated 05.04.2016 addressed to Manager (R&E) PESCO Peshawar that no outstanding dues against the premises proposed of Mansha Steel Mills at Village Khankai please.

Executive Engineer Op:
PESCO ~~Dargai~~ Division

ATTESTED

C.T.C

(11)

OFFICE OF THE
ASSISTANT COMMISSIONER
DARGAI
No. 1253 /T/I(ACD)
Dated 26 / 3 /2016

To

The Deputy Commissioner,
Malakand

Subject:- REQUEST FOR NO OBJECTION CERTIFICATE.

Reference your office letter No.1701-03/PS/DC/Mkd. date 07/03/2016 on the subject cited above.

The report of Naib Tehsildar, Dargai is in detailed. 8-kanal 10-marlas land in Khasra is on lease with applicant Mr.Noor-ul-Hassan and others executed by Shahzad, Nimat Ullah ,Naseem ullah, Muradullah and Fakhar-e-Islam of Kharkai for installation of steel mill. The land in question is free from all encumbrances.

Assistant Commissioner
Dargai

ATTESTED

C.T.C

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"B"

Environmental Protection Agency

Forestry, Environment & Wildlife Department
Govt. of Khyber Pakhtunkhwa

No. EPA/EIA/Masha/Steel/400-01 Dated 4/10/2017

To

Mr. Ali Azhar,
M/S Mansha Steel Mills,
Village Kharkai, Dargai, Malakand.

Subject: **ENVIRONMENTAL APPROVAL/OPERATIONAL NOC.**

I am directed to refer to your letter No. Nil dated 24-07-2017 on the subject cited above and to state that as you have started construction/civil work before the extension of Provincial Environmental Protection Act, 2014 in PATA. Now, as the work is near to completion, therefore you are directed to complete the reaming construction work at your mill with latest air Pollution control technology (Filter Bags).

The proponent shall obtain approval for operation of the project in accordance with the Regulation 13 (2) (b) and Regulation 18 of the IEE/EIA Regulations, 2000. The proponent shall inform this agency when construction phase is completed. Operational Approval shall be considered after compliance report of this Agency.

Assistant Director (EIA-I)

Copy for information:

1. The Deputy Commissioner, Malakand with the request that No Operational approval may be granted to the above mentioned unit as Khyber Pakhtunkhwa, Environmental Protection Act, 2014 is now extended to PATA region and this Agency will consider the case for Operational Approval after the compliance of NEQS.
2. P.A to Director General, EPA, Govt. of Khyber Pakhtunkhwa.

ATTESTED

O:\EIA Section 2011\Steel Mills\Mansha Steel Mill Malakand

3rd Floor, Old Courts Building, Khyber Road, Peshawar Cantt.
Tel: 92(91) 9210263-9210148, Fax: 92 (91) 9210280

C.T.C

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BEFORE THE HONOURABLE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No. _____/2019

M/S Mansha Steel Industry
Situated at Manzari Baba Road, P/o Dargai,
Khrkai, Tehsil Dargai, District Malakand
through Mr. Noor Ul Hassan, Partner ...Petitioner



VERSUS

1. Government of Khyber Pakhtunkhwa through its Chief Secretary, Civil Secretariat, Peshawar.

2. Director General Environmental Protection Agency, Khyber Pakhtunkhwa, 3rd Floor, Old Courts Building, Khyber Road, Peshawar Cantt.

3. Deputy Director (EIA), Environmental Protection Agency (EPA), Khyber Pakhtunkhwa, 3rd Floor, Old Courts Building, Khyber Road, Peshawar Cantt.

4. Assistant Director (EIA-I), Environmental Protection Agency (EPA), Khyber Pakhtunkhwa, 3rd Floor, Old Courts Building, Khyber Road, Peshawar Cantt.

.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AS AMENDED UPTO DATE.

Respectfully Sheweth:-

1. That the petitioner is a firm duly registered with Registrar of Firms Khyber Pakhtunkhwa, Peshawar under Partnership Act, 1932 under the name and style M/s Mansha Steel

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Industry having manufacturing unit of steel products at Manzari Baba Road P/o Dargai Khrkai, Tehsil Dargai District Malakand (formally called Provincially Administered Tribal Areas). The petitioner unit is a registered entity with the FBR, having NTN Registration No 5062733. *The petition is being filed through* Mr. Noor Ul Hassan, Partner *who has been duly authorized to file the instant writ petition through Resolution. (Copies of the Partnership Deed, Form H, Resolution & NTN Certificate & CNIC of all the partners are attached as annexure "A", "A/1", "A/2" "A/3" & "A/4").*

2. That to set up the Steel Furnace at Dargai, the petitioner invested more than Rs. 150 Millions including acquisition of land, installation of machinery duly equipped with electrical accessories including procuring high power transformer with high tension lines from the grad station to the unit from PESCO against payment of millions of rupees. It is further submitted that the PESCO sanctioned power load to the tune of 2.7 MW and has already been energized. *(Copies of the lease deed, list of machineries, Demand Note for Power Connection & load sanction are attached as annexure "B", "B/1" "B/2" & "B/3")*

3. That initially for the setting of the unit, certain required NOCs were obtained from the concerned departments and a building plan was also got approved from the Tehsil

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Municipal Administration. The petitioner was also applied for NOC to the Assistant Commissioner Malakand coupled with EPA (Environmental Protection Agency) vide letter NIL dated 24/07/2017. In response to the letter dated 24/07/2017 the Assistant Director (EIA-I) respondent No 4 was issued letter No EPA/ EIA/ Masha/Steel/400-01 dated 04/10/2017. *(Copies of the letter of approval of building plan, NOCs of various departments, NOC of Assistant Commissioner and letter No EPA/ EIA/ Masha/ Steel/ 400-01 dated 04/10/2017 are attached as annexure "C", "C/1", "C/2" & "C/3").*

4. That the petitioner unit was not required to obtain any construction phase approval as the same was earlier obtained. The project was completed in all respect and a latest Pollution Control System was also installed as per requirement of the prevalent law.

5. That as per direction of this Honourable Court, the DG EPA on 09/02/2018 submitted a progress report, wherein clearly mentioned that the following other Steel Mills were not required to obtain construction phase approval. It

I. Pak Premier
II. Gul Shahzada
III. Dargai Steel Mills
IV. Nishat Steel Mills
V. Ihtesham Steel Mills

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VI. *Mansha Steel Industry*

(Copy of the progress report of DG EPA dated 09/02/2018 is attached as Annexure "D")

6. That in the meanwhile the Human Rights Complaint Cell of this Honourable Court while entertaining complaint clubbed the same with the connected Writ Petitions more particularly W.P. No. 4661-P/2017, which came up for final hearing before Green Bench headed by his Lordship Justice Qaiser Rasheed Khan and Ms. Justice Musarrat Hilali on 10.05.2018 wherein it was inter alia held:-

"19. In the circumstances mentioned hereinabove, we direct the Environmental Protection Agency that after complying with the procedure given in Section 13 of the Act "MAY" issue proper NOC to those industrial units who are functioning without their being any NOC from the competent forum.....

22. Setting up of new industries and expansion of existing industries shall not be allowed in the said area except where the government itself declares an area as an industrial area....."

That this order was later reviewed and instead of Section 13, compliance of Section 11 of the KP Environment Protection Act 2014 was mandated by virtue of Judgment and Order

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dated 24.05.2018. *(Copies of the Judgment and Order dated 10.05.2018 & Review Order are attached as Annexure "E" & "F")*

7. That the petitioner unit was established and completed much prior to the deliverance of judgment of this Honourable Court dated 10/05/2018 and review order dated 24/05/2218, hence, the petitioner' unit does not hit by Para No 22 of the ibid judgment, wherein the ban was imposed by this Honourable Court on 10/05/2018 in Writ Petition No 4661-P/2017.

8. That the petitioner unit was completed in all respect prior to the imposition of ban on setting up new industry or expansion in the existing industry, which is evident from the progress report of the DG EPA dated 09/02/2018, therefore, the unit of the petitioner could not be termed setup after the crucial date i.e. 10/05/2018.

9. That some other identical petitions filed by M/S Dargai Steel Mills, M/s Ihtesham Steel Mills & M/S Gul Shahzada Steel Mills before this Honourable Court, which were come up for final hearing on 13.12.2018 and were dismissed. However, applications were filed as per observation of this Honourable, which are subjudice, the following observation are reproduced as under:-

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"In view of the above, this writ petition and the connected writ petition are dismissed accordingly. However, petitioner would be at liberty to approach this court in order to get exemption order of this court mentioned in Para-22 of the same if his industry does not fall within the definition of new industry or expansion of existing industry." (Copy of the Judgment and Order dated 13.12.2018 is attached as Annexure "G")

10. That the petitioner unit is neither fall within the definition of new Industry nor expansion of the existing Industry, being not covered under/out of the ambit of Para No 22 of the judgment rendered in Writ Petition 4661-P/2017 and is therefore equally entitled for a similar treatment in shape of grant of an Operational NOC. Even otherwise no judgment can have retrospective effect and the petitioner cannot be discriminated from those who were granted operational NOC after complying with provisions of Section 11 of the KP Environmental Protection Act, 2014.

11. That the petitioner is also unconditionally ready and willing to comply with all the requirements of Section 11 ibid and is entitled for the exemption so deemed necessary by this Honorable Court.

12. That indeed the construction work of the project was started and completed in the period when the KP Environmental

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Protection Act, 2014 was not extended to the erstwhile Provincially Administrated Tribal Area by virtue of Article 247 (3) [omitted] of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the Environmental Protection Agency (respondent No 4) was also issued letter No EPA/ EIA/ Masha/Steel/400-01 dated 04/10/2017.

13. That this Honourable Court on 10/05/2018 was allowed to issue writ in favour of M/s. Pak Premier Steel Mill, which was one of the unit reflected in the progress report of DG EPA dated 09/02/2018.

14. That as the unit of the petitioner was completed much earlier than the imposition of ban by this Honourable Court through a judgment in Writ Petition No 4661-P/2017 dated 10/05/2018, applied for the issuance of operational NOC which was regretted vide letter No EPA/ EIA/ Steel/Mansha-Malakand/ 18/729 dated 23/10/2018 due to the reason mentioned therein. *(Copy of the letter No EPA/EIA/Steel/Mansha- Malakand/ 18/729 dated 23/10/2018 is attached as annexure "H").*

15. That the petitioner having no other adequate and efficacious remedy is constrained to move this Hon'ble Court inter alia on the following grounds:-

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GROUNDS:-

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A. That admittedly the construction phase NOC was issued by the various departments lastly by the Environmental Protection Agency vide letter No EPA/ EIA/ Masha/ Steel/ 400-01 dated 04/10/2017, hence the petitioner cannot be termed as violator of the relevant provision of KP Environmental Protection Act, 2014.

B. That the petitioner unit was visited and inspected by the respondent No 2 on the direction of this Honourable Court and to this effect the progress report dated 09/02/2018 was also submitted wherein the name of the petitioner appeared with the remarks as follows:-

"The above situation prevails in the case of following other steel mill that were not required to obtain construction phase approval

I. Pak Premier
II. Gul Shahzada
III. Dargai Steel Mills
IV. Nishat Steel Mills
V. Ihtesham Steel Mills
VI. Mansha Steel Industry"

hence, the unit in question does not hit by the imposition of ban in Para No 22 of the judgment dated 10/05/2018 and 24/05/2018 and therefore, requires exemption as huge

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investment has been made by the petitioner and the unit in question has already been energized.

C. That the petitioner unit is neither fall within the definition of new industry nor expansion of existing industry, being not covered under/out of the ambit of Para No 22 of the judgment rendered in WP No 4661-P/2017 rather was completed much earlier than the judgment rendered, hence exemption from Para No 22 of the judgment is sought.

D. That the petitioner unit has fulfilled all the legal and codal formalities as provided under the KP Environmental Protection Act, 2014 as the same was constructed when the KP Environmental Protection Act, 2014 was not extended by virtue of Article 247(3) [omitted] of the Constitution of Islamic Republic of Pakistan to the erstwhile PATA, therefore, the non issuance of operational NOC is not only illegal, but in in-conflict with numerous Articles of the Constitution of Islamic Republic of Pakistan.

E. That the petitioner's Steel Mills is neither situated in the commercial nor populated/residential area thus the same is not a threat or danger to the environment of the locality. It is further submitted that all the precautionary measures have already been taken which can be verified/ascertained by the Environmental Agency as well.

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J. That any other points would be agitated during the course of arguments.

It is, therefore, most humbly prayed that on acceptance of this Writ Petition,

a. *Declare that the unit/mills of the petitioner does not hit by Para No 22 of the judgment dated 10/05/2018 in Writ Petition No 4661-P/2017 of this Honourable Court as the same was setup much prior to the deliverance of the ibid judgment.*

b. *Exempt the unit/mills of the petitioner as the same does not fall under the definition of new industry or expansion of the existing industry as by virtue of progress report dated 09/02/2018 of the respondent No 2.*

c. *This Honourable Court may direct the respondent No 2 to issue operation NOC to petitioner's unit while setting aside the regret letter No EPA/ EIA/ Steel/Mansha-Malakand/18/729 dated 23/10/2018.*

d. *Any other relief which has not specifically asked, may also be kindly granted.*

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INTERIM RELIEF:

By way of interim relief, the Respondent No. 2 may be directed to allow the petitioner temporarily to carry on its production activities in the unit as the unit has already been energized and the petitioner is paying bills on account of fixed charges to the PESCO, resultantly suffering financial losses, till the final decision of the instant Writ Petition.

Petitioner

Through

Muhammad Akbar Khan
Advocate,
High Court, Peshawar.

Dated: 24/01/2019

CERTIFICATE:

Certified as per instructions of my client that no such like petition on the subject issue is pending before this Hon'ble Court.

ADVOCATE

NOTE:

Identical cases as mentioned in the body of the petition are subjudice before this Honourable Court, hence the instant case may also be fixed with the same.

ADVOCATE

LIST OF BOOKS

1. Constitution of Islamic Republic of Pakistan, 1973.
2. KP Environmental Protection Act, 2014
3. Any other law book as per need.

ADVOCATE

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanun-e-Shahadat Order 1984
09 NOV 2019

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Judgment sheet

PESHAWAR HIGH COURT, PESHAWAR

Judicial Department

WP No. 847-P/2019

M/s Mansha Steel Industry
Vs.
Govt. of KPK etc.

JUDGMENT

Date of hearing 23.10.2019

Appellant(s) by Mr. Muhammad Akbar Khan, Advocate

Respondent(s) by Mr. Shumail Ahmad, Butt, Advocate General, Khyber Pakhtunkhwa

PESHAWAR HIGH COURT SEAL

IKRAMULLAH KHAN, J.- Through the instant constitutional petition, petitioner has prayed for the following relief:

> *"It is therefore, most humbly prayed that on acceptance of this writ petition:*
> *a. Declare that the unit/mills of the petitioner does not hit by Para No.22 of the judgment dated 10.05.2018 in WP No.4661-P/2017 of this Honourable Court as the same was setup much prior to the deliverance of the ibid judgment.*
> *b. Exempt the unit/mills of the petitioner as the same does not fall under the definition of new industry or expansion of the existing industry as by virtue of progress report dated 09.02.2018 of the respondent No.2.*
> *c. This Honourable Court may direct the respondent No.2 to issue operation NOC to petitioner's unit while setting aside the regret letter No.EPA/EIA/Steel/Mansha-Malakand/18/729 dated 23.10.2018."*

2. We heard learned counsel for the parties and also perused the documents available on record as well as judgment of this Court dated 10.05.2018, rendered in WP

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No.4661-P/2017 and the progress report submitted by Competent Authority dated 09.02.2018.

3. With consent of both the learned counsel for the parties, this writ petition is disposed of in terms that the Deputy Commissioner or any other authorized person on this behalf/ Director General Environmental Protection, Agency KPK, Peshawar shall inspect the spot keeping in view his progress report and to determine as to whether Industry of the petitioner has already been completed prior to the judgment of this Court dated 10.05.2018 and if the premises of the Industry has already established and constructed, then relevant NOC shall be issued to the petitioner for further establishment of his Industry under consideration.

Announced:
23.10.2019

JUDGE

JUDGE

(DB) Hon'ble Mr. Justice Roohul Amin Khan & Hon'ble Mr. Justice Muhammad Nasim Anwar

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorized Under Article 87
The Qanun-e-Shahadat Order 1984
09 NOV 2019

No. 10409
Date of Presentation of Application 24/10/19
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Environmental Protection Agency

Forestry, Environment & Wildlife Department
Govt. of Khyber Pakhtunkhwa

(27)

No.EPA/EIA/Steel/Masnha-Malakand/21/973

Dated 05/07/2021

To

Mr. Shahzad Shafi,
Manager Mansha Steel Mills,
Village Kharkai, Takkar, Near Wazirabad,
Manzari Baba Road, Dargai, Malakand.
Contact No. 0343-5000002

Subject: **APPLICATION FOR THE GRANT OF NOC**

I am directed to refer your application No. Nil dated 20/10/2020, on the subject cited above and to state that this Agency is unable to process your application till the decision of Worthy Environmental Protection Tribunal (EPT).

Furthermore, you are, directed to properly control the emissions especially during casting period as the same was observed during official site visit of your unit dated 27/05/2021, please.

Deputy Director (EIA)

Copy for information to;

- PA to Director General, EPA Govt. of Khyber Pakhtunkhwa, Peshawar.

3rd Floor, Old Courts Building, Khyber Road, Peshawar Cantt.
Tel: 92(91) 9210263-9210148, Fax: 92 (91) 9210280

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