

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

APPEAL NO. 35/2023

IN THE MATTER OF:

SUKHDEEP SINGH BUTTER

S/o Late Sh. Baldev Singh Butter,
R/o Dhulkot Road, Dashmesh Nagar,
Ahmedgarh, District - Malerkotla
Punjab-148021

...Appellant(s)

Versus

- 1. PUNJAB POLLUTION CONTROL BOARD,
Through its Chairman,**
Vatawaran Bhawan, Nabha Road,
Patiala, Punjab-147001
- 2. PRINCIPAL SECRETARY CUM APPELLATE AUTHORITY,**
Department of Science, Technology and Environment, Punjab,
Room No. 520, 5th Floor,
Punjab Civil Secretariat- 2, Sector-9,
Chandigarh-160017
- 3. SENIOR ENVIRONMENTAL ENGINEER,**
Punjab Pollution Control Board,
Zonal Office-2,
Vatavaran Bhawan, Nabha Road,
Patiala, Punjab-147001
- 4. ENVIRONMENTAL ENGINEER,**
Punjab Pollution Control Board,
Regional Office, Industrial Focal Point,
Sangrur, Punjab-148001
- 5. MR. SURJIT SINGH,**
S/o Sh. Inder Singh,
R/o Dhulkot Road, Dashmesh Nagar,
Ahmedgarh, District Malerkotla,
Punjab-148021

6. MR. HARDEEP SINGH,
S/o Mr. Surjit Singh,
R/o Dhulkot Road, Dashmesh Nagar,
Ahmedgarh, District Malerkotla,
Punjab-148021

...Respondent(s)

COUNSELS FOR APPELLANT(S):

Ms. Sunaina, Advocate (Through VC)

COUNSELS FOR RESPONDENT(S):

None

CORAM:

HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

RESERVED ON: FEBRUARY 05, 2024
PRONOUNCED ON: MARCH 15, 2024

JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. This Appeal has been preferred with a prayer to set aside orders, dated 30.10.2023 passed by Punjab Pollution Control Board (hereinafter referred to as '**PPCB**') and dated 07.11.2022 passed by Senior Environmental Engineer, PPCB, Patiala. The Appellant has referred Sections 14, 15, 16, 17 and 18(1) of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act 2010**') whereunder this Appeal has been filed.

2. The facts in brief are that appellant Sukhdeep Singh Butter is a resident of Dashmesh Nagar, Ahmedgarh, District Sangrur, State of Punjab.

3. Respondent 5 i.e., Surjit Singh, son of Inder Singh commenced his business of automobile repairing and servicing with installation of wheel balancing machines, wheel alignment machine, hand tools, tyre changer machines, drill machines, grinder, air compressor etc. in 2001 in the neighbourhood of appellant.

4. Appellant's mother Smt. Daljit Kaur filed **Writ Petition (Civil) No. 1110/2012, Smt. Daljit Kaur vs. State of Punjab & Others** before Punjab and Haryana High Court at Chandigarh against respondent 5 which was transferred to this Tribunal and registered as **Original Application** (hereinafter referred to as '**OA**') **29/2013(T_{HC}), Daljit Kaur vs. State of Punjab and Others**. OA was disposed of by Tribunal vide order dated 26.07.2023 which reads as under:

"We have heard Learned counsel for the parties.

By consent of Learned Counsel for the parties, inducing amicus curie appointed for the Applicant, the Application is being disposed of on following terms:

A. The **industry of the Respondent No 8**, which has now been completely closed down and the electricity supply is also disconnected **shall remain close hereafter, until a regular consent to operate is obtained for re-operation thereof.**

B. The Respondent No. 8 is at liberty to apply to the Punjab Pollution Control Board for consent to operate the industry.

The Punjab Pollution Control Board is at liberty to examine such Application of the Respondent No. 8 on merits thereof, considering the relevant norms and without any kind of prejudice in the context of the earlier closure of the industry.

The Application is being disposed of without considering anything about merits of the matter. The Punjab Pollution Control Board may also consider if it is within the norms.

The Counsel for the Respondent No. 8 states that such afresh

Application will be moved within a period of one (1) week. It shall be moved at the most within a period of two (2) weeks, if so desired and thereafter the Punjab Pollution Control Board may expedite the process of considering the proposal and shall dispose of the Application within a reasonable period, as far as possible, within four (4) weeks. The Applicant is permitted to take all objections as may be permissible by making a due representation to the Pollution Control Board and may be heard prior to consideration of the proposal.

Copy of this order may be given by dasti and Counsel for the Pollution Control Board may furnish such copies to the Concerned Authority without any delay. Typed copy of this order may be furnished, authenticated by the Court Master.

The Application is accordingly disposed of with no order as to costs.”

5. Thereafter, respondent 5 submitted an application dated 28.05.2015 before Member Secretary, PPCB, Patiala for obtaining Consent to Establish (hereinafter referred to as **‘CTE’**) under the provisions of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as **‘Water Act 1974’**) and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as **‘Air Act 1981’**); Consent to Operate (hereinafter referred to as **‘CTO’**) under Sections 25 and 26 of Water Act 1974 and under Section 21 of Air Act 1981 and authorisation under Rule 5 of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 (hereinafter referred to as **‘HWMHTM Rules 2008’**).

6. The said application was submitted for establishment and operation of a unit engaged in working of wheel balancing and alignment; repair job work with Lathe welding machine, drill machines and hand tools. The above unit was to be established at Dhurkot Road, Ward No. 17, Ahmedgarh, Malerkotla, Sangrur.

7. Consent was denied by PPCB vide letter dated 18.11.2015 on the ground that earlier also, Surjit Singh, Proprietor of M/s. Surjit Wheel point had applied for CTO under the provisions of Water Act 1974 and Air Act 1981, which was refused vide order dated 07.02.2014 for the following reasons:

“The site of the industry/workshop is located within M.C limit of Ahmedgarh, surrounded by residential area i.e., non designated area, thus, is not suitable for carrying out industrial activity.”

8. Since there is no change in the status of the site and once the consent was already declined, there was no reason to grant consent again, hence it was refused vide order dated 18.11.2015.

9. Surjit Singh i.e., respondent 5 preferred an Appeal before Appellate Authority-cum-Secretary to Government of Punjab, Department of Science, Technology and Environment against order dated 18.11.2015, whereby consent was refused. Appellate Authority vide order dated 18.10.2016 (annexure A-10 at page 70 of paper book) found that various contentions advanced by the parties were not considered by PPCB and, therefore, matter was remanded with the direction to consider all the contentions raised by the parties and to pass a speaking order.

10. Again, PPCB vide order dated 11.01.2017 rejected the application and declined to grant consent to respondent 5 on the ground that in residential area, non-conforming activities cannot be allowed.

11. Respondent 5 filed ***Appeal No. 10/2017, M/s. Surjeet Wheel Point vs. Punjab Pollution Control Board & Others*** to this Tribunal. This Appeal was dismissed on the ground of limitation vide order dated 05.07.2017. The order passed by Tribunal reads as under:

“Heard.

The Learned Counsel appearing for the Applicant submits that the appellant had in a bonafide belief presented the appeal but registry is making it difficult. His grievances is that had the registry received additional papers which is kept in file perhaps the case could have been presented in time.

However, from the office note and the case papers it noted, the case were presented in the registry and it was scrutinized on 29th April, 2017. According, to the Learned Counsel, it was filed on 26th April, 2017. Be that even if the case is filed as on 26th April, 2017, the Appellant had undoubtedly approached when it was barred from the date of passing of the order. The date of the service of the impugned order that is 17th January, 2017.

Thus, it is evidently clear that the first filing, it is only 29th April, 2017. Thus appeal is barred and any application presented beyond the period of limitation prescribed cannot be entertained. However, it is submitted that the registry is not informing and receiving papers, we direct the registry to notify the rules to Competent Authority in the matter relating to filing the case papers and representation after rectification of defects on notice board and the Bar Counsel office.

This application is dismissed as it was received beyond the period of limitation with no order as to costs.”

12. Respondent 5 then approached Supreme Court by filing **Civil Appeal No. 8582/2018, M/s. Surjeet Wheel Point @ Surjeet Agro Works vs. Punjab Pollution Control Board & Others** which was disposed of vide order dated 01.02.2019, whereby Supreme Court condoned delay in filing Appeal before Tribunal and, thereafter, remitted the matter back with direction to decide the said Appeal on merits. Supreme Court’s order reads as under:

“Having heard learned counsel appearing for the parties and upon perusal of the record, we are of the opinion that this Court should condone the delay in filing Appeal No.10 of 2017 before the National Green Tribunal, Principal Bench, New Delhi, even when the National Green Tribunal did not have the requisite view.

Ordered accordingly.

This order is passed in exceptional circumstances in exercise of our power under Article 142 of the Constitution of India and without making it as a precedent.

*Accordingly, this appeal is disposed of and the **case is remitted back to the National Green Tribunal, Principal Bench, New Delhi, for its disposal on merits and in accordance with law.***

13. **Appeal 10/2017 (supra)** was again considered by Tribunal vide order dated 11.03.2019, which was dismissed by observing that industry is proposed to be located in residential area, which will create problem of pollution. Tribunal's order dated 11.03.2019 reads as under:

“M.A. No. 46/2019 IN Appeal No. 10/2017

In pursuance of order dated 01.02.2019 passed by the Hon'ble Supreme Court in Civil Appeal No. 8582/2018, M/s Surjeet Wheel Point @ Surjeet Agro Works Vs. Punjab Pollution Control Board & Ors., the appeal has been taken up for consideration on merits.

*We find that by the impugned order the Punjab State Pollution Control Board (PSPCB) refused to give Consent to Operate under the Provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. **It was found that the industry located in residential area will create problem of pollution. Such location is not permitted. The Municipal Council had already cancelled the NOC.***

In view of above, we do not find any merit in the appeal and the same is dismissed.

14. Thereafter, respondent 5 in June 2020 started to run its automobile repair shop in the name of M/s. H.S. Automobiles at the same site where it had proposed to establish M/s. Surjit Wheel Point.

15. Appellant's mother Daljit Kaur approached this Tribunal in **OA 266/2020, Daljit Kaur vs. State of Punjab & Others** alleging that by changing the name, Surjit Singh has started M/s. H.S. Automobile and

thereby, causing noise pollution and running industrial unit in a residential area.

16. Vide order dated 26.11.2020 passed in **OA 266/2020 (supra)**, Tribunal sought a factual Report from PPCB. Report dated 24.12.2020 was submitted wherein it was said that site was already visited by Assistant Environmental Engineer of PPCB on 07.08.2020 and his observations are as under:

- “a) The motor garage has **installed 01 no. alignment and wheel balancing machine, scanner, tools and 01 no. old tyre changer (defunct condition).***
- b) The representative of motor garage informed that the shop is meant for commercial use and he submitted property tax receipts issued by Municipal Council, Ahmedgarh.*
- c) The **motor garage was not generating any trade effluent and domestic effluent generated was being discharged into open drain outside the shop.***
- d) The motor garage has not installed any bathi/furnace in the premises.*
- e) During visit, 01 no. air filter and about ½ litre of car servicing black was found in container.*
- f) The **motor garage was running without consent to operate of the Board as required under the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981.”***

17. In the light of the observations above, a show cause notice dated 14.08.2020 was issued under the provisions of Water Act 1974 and Air Act 1981 to show cause as to why action be not taken against the said industry. The representative of the unit i.e., Hardeep Singh son of Surjit Singh, submitted reply dated 01.09.2020 stating as under:

- a) *In the said garage, I am **only doing the work of Wheel Balancing and Alignment, Car Scanning and Car Remote Keys.***
- b) *I am using the garage for commercial purpose for which I am depositing the requisite fee/ tax with Municipal Council.*
- c) *That **no harmful chemical is generated nor I am disposing of such things in open atmosphere or in drain (naali).***
- d) *That I have not installed any furnace in the said garage*
- e) *That the air filter and the ½ liter car servicing oil found during the visit was of my own car which was being used for domestic purposes. It is pertinent to mention here that if a car is serviced, about 5 liters' black oil is generated and not ½ liter, which shows that **I am not doing the work of car service.***
- f) *That I make a request that the **work of motor garage which I am doing do not generate any Air, Water and noise pollution.** The work I am doing has been shown at serial no. 4047 of the exempted categories by the Punjab Pollution Control Board, the photocopy of which I am suppling. Hence, I do not require any consent/approval of Punjab Pollution Control Board."*

18. Hardeep Singh i.e., respondent 6 also filed an affidavit dated 02.09.2020 and English translation of the said affidavit is reproduced in para 6 of the report which reads as under:

- a) *That my father Sh. Surjeet Singh was doing the work of car washing, lathe machine and welding at the site, which was closed in the year 2013 due to Water Pollution.*
- b) *That in the said garage **I am only doing the work of Wheel Balancing and Alignment, Car Scanning and Car Remote Keys. No harmful chemical is generated and no such thing is disposed of in open environment or drain (naali).***
- c) *That I have not installed any furnace in the said garage.*
- d) *That the air filter and the ½ liter car servicing oil found during the visit was of my own car which was being used for domestic purposes. It is pertinent to mention here that if a car is serviced, about 5-liter black oil is generated and not ½ liter, which shows*

that I am not doing the work of car service. Even then, if I do any wrongful act, the Department may take legal action against me.

- e) *That I make a request that the work of motor garage which I am doing do not generate any Air, Water and noise pollution. The work I am doing has been shown at serial no. 13 of the exempted categories by the Punjab Pollution Control Board, the photocopy of which I am supplying. Hence, I do not require any consent approval of Punjab Pollution Control Board.*
- f) *That I have got the commercial map of my shop/garage approved from the Municipal Council, Ahmedgarh and the copy of the same is enclosed. It is pertinent to mention here that in an area of about 1.0 km from Dhulkot Chowk to Dhulkot Chungi, 49 NRS connections/ commercial connections are in operation, a list of which is enclosed.*
- g) *That if any NOC of the Department is required, the same may please be issued.”*

19. Again, to verify the facts stated by Harjit Singh as representative of the unit, the site was visited on 15.09.2020 by Assistant Environmental Engineer, Regional Officer, Sangur and he made following observations:

- a) *The **area in question is a commercial area where shops of different types are in existence such as two wheeler and four wheeler service stations, Tractor workshops, Auto and Electronic shops, spare part shops, Karyana stores, Two wheeler and Four wheeler repair shops, Internet Cafe, Boutique shops, Saloons, Battery shops, Hardware shops and other mechanical workshops etc.***
- b) *During visit, the premises of Sh. Hardeep Singh S/o Sh. Surjit Singh, Dhulkot Road, Dashmesh Nagar, Ahmedgarh, District Sangrur was also examined and it was observed that **he is only doing wheel balancing and alignment, car scanning and making of car remote keys, which is a commercial activity** and is not covered under the ambit of consent management system of the Board. No water pollution or air pollution is being caused by the Sh. Hardeep Singh S/o Sh. Surjit Singh.*
- c) *The **complainant Smt. Daljit Kaur**, W/o Sh. Baldev Singh Buttar, Dhulkot Road, Dashmesh Nagar, Ahmedgarh, District Sangrur is residing near to the shop of Sh. Hardeep Singh and*

her sons are also doing Commercial activities in the form of running homeopathic clinic in the name of M/s Buttar Homeopathic Clinic by Dr. Jugneet Singh Buttar and M/s Awakening, The Art of Self Transformation by Sh. Sukhdeep Singh Buttar. During visit, Sh. Sukhdeep Singh Buttar was contacted and he informed that they are running 02 no. clinics as mentioned above and having commercial electricity connections. They are also residing behind the clinics.

- d) On the other side of the clinic, there are 03 no. other shops which were found locked and thereafter, a service station namely M/s Guru Teg Bahadur Service Station engaged in washing and servicing of cars. Further, it was observed that the most of the people in the area are residing and carrying out their business in the same premises.*
- e) The road on which the commercial activities are being carried out is about 45 feet road (20 feet paved).*
- f) A copy of visit report prepared by the visiting officer during visit to the area on 15.9.2020 is enclosed herewith as Annexure R-5.”*

20. In view of the above observations of the official of PPCB, show cause notice was dropped and no action was taken against M/s. H.S. Automobile.

21. The above Report dated 24.12.2020 was considered by Tribunal on 02.03.2021 and observing that since authorities have found that there was no violation on the part of the unit concerned and no action was taken pursuant to show cause notice, there was no occasion to pass any further order, hence application was disposed of without any further order. Order dated 02.03.2021 passed by Tribunal reads as under:

“1. Grievance in this application is against operation of M/s H.S Automobile at Ahmedgarh District, Sangrur, Punjab. Case of the applicant is that the unit is being operated in residential area without ‘Consent to Establish’ and ‘Consent to Operate’ under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. There are earlier orders of this Tribunal dated 11.03.2013, 09.04.2013, 26.07.2013, 07.02.2014 in

OA No. 29 of 2013 (THC) and order dated 11.03.2019 in Appeal No. 10 of 2017 against the said unit but the unit is operating by changing the name. It has been causing pollution since 2011. The Punjab PCB issued notice dated 16.06.2020 pointing out the illegal operation of the unit but no further action has been taken. The applicant is living in the vicinity of the unit and is affected by the pollution caused.

2. Vide order dated 26.11.2020, a status report was sought from the State PCB. Accordingly, the State PCB has filed its report dated 24.12.2020 after visiting the site in question and also considering the response of the unit.

“9. That from the facts mentioned above, it is concluded that the reply to show cause notice submitted by M/s H.S Automobile is satisfactory and there is no violation of the orders of Hon’ble National Green Tribunal passed earlier in the cases related to the matter. However, it is submitted that in case the unit is found to be generating any type of pollution at any given time, appropriate action in accordance with the provisions of Law will be taken by the Punjab Pollution Control Board.”

In view of above, no further order is necessary at this stage.

The application is disposed of accordingly.

In view of the order passed today in the main application, all pending I.A.s will also stand disposed of accordingly.”

22. It appears that thereafter appellant himself preferred **OA 231/2021, Sukhdeep Singh vs. State of Punjab & Others** making a similar complaint that M/s. H.S. Automobile is operating illegally, causing pollution in the residential area. This OA was considered by Tribunal on 23.09.2021 and referring to earlier **OA 266/2020 (supra)**, which was filed by appellant’s mother, Tribunal took the view that second application on the same issue is not maintainable. However, if there is any violation, the same may be pointed out to PPCB and against decision of PPCB, further

remedies may be persuaded as per law. Tribunal's order dated 23.09.2021, where by **OA 231/2021 (supra)** was disposed of, reads as under:

"1. This application is a repeat application of O.A. No. 266/2020, Daljit Kaur v. State of Punjab & Ors. which was disposed of on 02.03.2021. Only justification for filing the second application is that earlier application was filed by the mother of the applicant who expired and thus the report that there was no violation by M/s H.S. Automobiles could not be contested.

2. We are of the opinion that **second application on the same issue is not maintainable**. Moreover, in the report upon which the matter was earlier disposed it is stated that **in case any pollution is found action will be taken as per law**. Operative part of the order dated 02.03.2021 is quoted below:

"1....xxx.....xxx.....xxx

2. Vide order dated 26.11.2020, a status report was sought from the State PCB. Accordingly, the State PCB has filed its report dated 24.12.2020 after visiting the site in question and also considering the response of the unit.

"9. That from the facts mentioned above, it is concluded that the reply to show cause notice submitted by M/s H.S Automobile is satisfactory and there is no violation of the orders of Hon'ble National Green Tribunal passed earlier in the cases related to the matter. However, it is submitted that in case the unit is found to be generating any type of pollution at any given time, appropriate action in accordance with the provisions of Law will be taken by the Punjab Pollution Control Board."

3. Thus, **any violation can be first pointed out to the State PCB and against decision of the State PCB, further remedies can be taken as per law, if the grievance survives**.

The application is accordingly disposed of."

23. Appellant, thereafter, filed a complaint letter dated 28.07.2022, addressed jointly to the Chairman, PPCB and Senior Environmental Engineer, PPCB, Zonal Office-2, Patiala, alleging that M/s. H.S. Automobiles has been established and operating alongside residential

house of appellant, in violation of the policy and rules of PPCB. It is said that without obtaining any consent under Water Act 1974, Air Act 1981 and authorisation under HWMHTM Rules 2008 and also in violation of the siting criteria, M/s. H.S. Automobiles is operating. Appellant requested the said authorities to take legal action to close down the said unit and/or to issue direction to Punjab State Power Corporation Limited to disconnect electricity supply to the said unit. Appellant has said that the said complaint/representation was also uploaded on PGRS Portal vide grievance ID No. 20220130059 dated 01.09.2022.

24. Appellant's complaint was forwarded to Regional Office whereupon Assistant Environmental Officer of Regional Office visited the site on 03.10.2022 and after inspecting the site, submitted report with following observations:

- “1. *The unit is engaged in business of wheel balancing of four wheelers.*
2. *The representative of the unit informed that the shop is utilized for commercial use and he is paying property tax for the same to Municipal Council, Ahmedgarh.*
3. *The **unit is not generating any trade effluent** and domestic effluent generated is being discharged into open drain outside the shop.*
4. *The **activity regarding alignment and wheel balancing is not covered under the Consent Management System as per in the policy of the Board under prevalence.***
5. *The unit has neither added nor started any new activity at the said site.*
6. *The unit M/s. H.S. Automobiles has not applied for obtaining any NOC/CTO of the Board under the Water Act, 1974 and the Air Act, 1981. Thus, no application is pending in Regional Office, Sangrur.”*

25. In view of the above observations, Senior Environmental Engineer communicated letter dated 07.11.2022 (annexure A-2 at page 44 of the paper book) to appellant stating that M/s. H.S. Automobiles is neither violating order of Tribunal nor causing any air or water pollution and it also does not come within the ambit of consent management system of Board, hence no further action is required in the matter.

26. Appellant challenged order dated 07.11.2022 by filing an Appeal dated 30.11.2022 under Section 31 of Air Act 1981 before Secretary cum Appellate Authority, Department of Science, Technology and Environment, Punjab.

27. On behalf of Department of Science, Technology and Environment, a letter dated 25.04.2023 was issued by Senior Law Officer (Appellate Authority), referring the matter to Chairman, PPCB for appropriate decision on merits and copy of the said letter was forwarded to the appellant.

28. Ultimately, vide letter dated 30.10.2023, decision of Chairman of the Board has been communicated to appellant. The said decision reads as under:

- “1. *M/s. H.S. Automobile, Ahemdgarh, Distt. Malerkotla is engaged in the business of wheel balancing of four wheelers as verified by the officer of the Board during visit on 03/10/2022. Such type of activity is not covered under the consent management system.*
2. *Environmental Engineer, Regional Office, Sangrur shall visit the site to reascertain the activities being carried out by M/s. H.S. Automobile carryout noise monitoring and shall submit report/recommendations within 7 days, accordingly.”*

29. The present Appeal has been preferred, challenging the order dated 07.11.2022 issued by Senior Environmental Engineer, PPCB and 30.10.2023 sent by Environmental Engineer (ZP-II) for and on behalf of Chairman, PPCB on the ground that appellant's complaint has been rejected in violation of the principle of natural justice and relevant facts have not been considered by the Authorities concerned while declining to interfere on the request of appellant for closure of the questioned unit i.e., M/s. H.S. Automobiles.

30. From the above facts, having serious doubt about maintainability of Appeal, we questioned Learned Counsel appearing for appellant to demonstrate as to how Appeal in question is maintainable under Section 16 of NGT Act 2010. She was also questioned as to how Sections 14, 15, 17 and 18 are attracted in the present Appeal which have been mentioned by appellant in the memo of Appeal.

31. At the outset, Learned Counsel appearing for appellant stated that since it is an Appeal, sections 14 and 15 are not attracted.

32. It is also not disputed that under Section 17, if any death or injury has been suffered by any person (other than a workman) or damage has been caused to any property or environment arising from an accident or an adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II. In the present Appeal, there is no such claim by appellant and no such case has been made out, therefore, even Section 17 is not attracted.

33. So far as Section 18 is concerned, Learned Counsel appearing for appellant did not dispute that it provides procedure for filing an Appeal under Section 16 before Tribunal and is not a substantive provision for providing any cause of action by itself.

34. For the purpose of maintainability of Appeal, Learned Counsel appearing for appellant could not dispute that it is only Section 16, which has to be examined whether present Appeal falls within purview of Section 16 of NGT Act 2010 and other provisions of NGT Act 2010 mentioned in memo of appeal are not attracted.

35. Coming to Section 16, Learned Counsel appearing for appellant relied on clause (c) and (f) of NGT Act 2010. We may reproduce the above clauses as under:

“Section 16. Tribunal to have appellate jurisdiction. —Any person aggrieved by, -

...

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

...

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);”

36. Clause (c) of Section 16 provides that if any direction has been issued, after commencement of NGT Act 2010 by a Board under Section 33A of Water Act 1974 and against such direction, Appeal before Tribunal under Section 16 shall be maintainable.

37. In the present case, when questioned, Learned Counsel appearing for appellant could not show that any direction under Section 33A of Water Act 1974 has been issued by PPCB. Here, we may also refer to Section 33A of Water Act 1974 which reads as under:

“33. Power of Board to make application to Courts for restraining apprehended pollution of water in streams or wells. -

...

33A. Power to give directions. —

Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation. —For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.”

38. Despite repeated query, Learned Counsel appearing for appellant could not show as to how letter dated 07.11.2022 or 30.10.2023 can be treated to be a direction under Section 33A of Water Act 1974. Therefore, Clause (c) of Section 16 is not attracted in the case in hand, hence, the present Appeal is not maintainable under Section 16(c) of NGT Act 2010.

39. Clause (f) of Section 16 talks of any order or decision made on or after commencement of NGT Act 2010, by Appellate Authority under

Section 31 of Air Act 1981. Section 31 of Air Act 1981 provides that where a person aggrieved by an order made by State Board under Air Act 1981, he may prefer an appeal to such authority as the State Government may think fit to constitute. Section 31, therefore, talks of an act or decision taken by State Boards under Air Act 1981.

40. We questioned Learned Counsel appearing for appellant to show as to which provision of Air Act 1981, appellant's letter dated 28.07.2022 (annexure A-15 at page 85 of paper book) would fall and also to show the provision under which order dated 07.11.2022 shall fall. The facts noticed above show that a complaint was made by appellant to which PPCB did not find any reason to take any action. Learned Counsel appearing for appellant could to point out any provision under which appellant's letter dated 28.07.2022 would fall and also the letter dated 07.11.2022 sent by Senior Environmental Engineer would be covered.

41. That being so, neither any Appeal under Section 31 of Air Act 1981 was maintainable before Appellate Authority nor any further Appeal under Section 16(f) is maintainable before this Tribunal.

42. However, even if we assume that letter dated 07.11.2022 may be treated to be an order or decision under Air Act 1981 where against Appeal under Section 31 would be maintainable, we find that the authorities have found that M/s. H.S. Automobiles was not violating any provision of Air Act 1981 or Water Act 1974 as neither air pollution nor water pollution was found to have been caused by the said unit. Further they also did not find that the activity and functioning of the unit attracts the provisions relating to consent under Water Act 1974 and Air Act 1981. Therefore, the authorities did not find any reason to take any further action in the matter.

43. When questioned, as to how and under which provision of Water Act 1974 and Air Act 1981, the unit in question was liable to take consent when it was causing neither any water pollution nor air pollution, Learned counsel appearing for appellant could not show any such provision and only shows that since in the categorization of the industries, automobiles repair work shop is shown as white category industries at serial no. 47, Type Code 4047 and, therefore, it ought to have taken consent under Air Act 1981.

44. Here, we find that requirement of consent is under sub-section 1 of Section 21 of Air Act 1981 which reads as under:

“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 (47 of 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.]”

45. A perusal of Section 21(1) clearly shows that no person can establish or operate any industrial plant in any air pollution control area without obtaining previous consent. The term ‘**industrial plant**’ has been defined in Section 2(k) and reads as under:

“2. Definitions. —*In this Act, unless the context otherwise requires,*

—

...

(k) “industrial plant” means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;”

46. The above definition of ‘industrial plant’ clearly shows that if any plant is used for any industrial or trade purposes and emitting any air pollutant into atmosphere, only then it answers the term industrial plant which require prior consent under Section 21. No material has been placed on record to show that the unit in question is emitting any air pollutant in the atmosphere and answers the definition of ‘industrial plant’ under Section 2(k) of Air Act 1981. In that view of the matter, requirement of prior consent under Section 21, per se, is not attracted.

47. Learned Counsel appearing for appellant then contended that unit in question is causing noise pollution. Our attention is drawn to the definition of ‘air pollutant’ and ‘air pollution’ in Clauses (a) and (b) of Section 2 which reads as under:

“2. Definitions. —*In this Act, unless the context otherwise requires,*

—
...

(a) **“air pollutant”** means any solid, liquid or gaseous substance **(including noise)** present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) **“air pollution”** means the presence in the atmosphere of any air pollutant;”

48. It is no doubt true that noise pollution constitutes air pollutant and if it is being caused by any unit, it may be covered by Air Act 1981 and Section 21 in such a case may be attracted. However, in the present case, even on this aspect, nothing has been brought on record to show that the unit in question is causing any air pollution.

49. So far as the Appellate Authority is concerned, on the question as to whether any air pollution is being caused or not by the unit, Appellate

Authority has itself directed Environmental Engineer, Regional Office, Sangrur to revisit the site and re-ascertain the activities to find out noise pollution, if any and submit report.

50. Therefore, though appellant has not brought any material on record to show that the unit is causing any noise pollution but Appellate Authority on its own has left this issue open and directed Environmental Engineer to find out whether there is any noise pollution or not. So far as this aspect is concerned, appeal before Tribunal is pre-mature.

51. In view of the above discussion, we dispose of this Appeal by observing that Appellate Authority shall ensure that Environmental Engineer must submit Report with respect of the monitoring of noise within time and, thereafter, the same shall be examined and a final decision on this aspect shall be taken within one month from today.

52. Copy of this judgement shall be forwarded to Appellate Authority and PPCB for compliance.

PRAKASH SHRIVASTAVA,
CHAIRPERSON

SUDHIR AGARWAL,
JUDICIAL MEMBER

DR. A. SENTHIL VEL,
EXPERT MEMBER

DR. AFROZ AHMAD,
EXPERT MEMBER

March 15, 2024
Appeal No. 35/2023
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