

Item Nos. 05 to 08

Court No. 1

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

Appeal No. 20/2023
(I.A. No. 709/2023)

Haryana State Pollution Control Board & Anr. Appellant(s)

Versus

M/s Mahadev Grit Udyog Respondent

With

Appeal No. 21/2023
(I.A. No. 710/2023)

Haryana State Pollution Control Board & Anr. Appellant(s)

Versus

M/s Shyam Grit Udyog Respondent

With

Appeal No. 24/2023
(I.A. No. 711/2023)

Haryana State Pollution Control Board & Anr. Appellant(s)

Versus

M/s M R Stone Metal Industries Respondent

With

Appeal No. 25/2023
(I.A. No. 712/2023)

Haryana State Pollution Control Board & Anr. Appellant(s)

Versus

M/s M R Stone Metal Industries Respondent

Date of hearing: 18.09.2023

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Appellant(s): Mr. Rahul Khurana, Advocate (through VC)

ORDER

1. These Appeals have been filed under Sections 16 (f) and 18 of the National Green Tribunal Act, 2010 read with Section 31(b) of the Air (Prevention and Control of Pollution) Act, 1981 challenging the common order dated 18.05.2023 passed in Appeal Nos. 07/2023, 08/2023, 09/2023 and 10/2023 by the Appellate Authority constituted under the Air (Prevention and Control of Pollution) Act, 1981.

2. Learned Counsel for the Appellant has submitted that the same order of the Appellate Authority was subject matter of challenge in Appeal No.22/2023 before this Tribunal and Appeal has been dismissed by order dated 11.09.2023. He further submits that these matters are squarely covered by the earlier order of this Tribunal. The Tribunal in earlier Appeal No.22/2023 against the above order in the matter *Haryana State Pollution Control Board & Anr. v M/s. VK Stone Crushing Co.* dated 11.09.2023 had passed the following order:-

"1. This Appeal under Sections 16 (f) and 18 of the National Green Tribunal Act, 2010 read with Section 31(b) of the Air (Prevention and Control of Pollution) Act, 1981 has been filed against the order dated 18.05.2023 passed in Appeal No. 08/2023 by the Appellate Authority.

2. The respondent has established a stone crushing unit after obtaining CTE/CTO from the appellant board. The grievance of the respondent started when cancellation/withdrawal of consent to operate order dated 02.02.2023 and closure order dated 03.02.2023 was served upon the respondent. The order was subject matter of challenge before the Appellate Authority constituted under the Air (Prevention and Control of Pollution) Act, 1981. By the impugned order, the Appellate Authority has allowed the appeal and set aside the order of withdrawal/revocation of CTO and closure of respondent unit.

3. The Appellate Authority while allowing the appeal has noted that the competent authority had travelled beyond the ground mentioned in the 2 show cause notice while passing the order of revocation of

consent to operate and the closure order. The show cause notice was issued on the ground that the unit falls within 1 km of urbanizable zone and is not located in the notified crusher zone but the impugned orders were passed by the competent authority on as many as six grounds relating to violations whereas grounds no. 1 to 5 considered in the impugned order were not mentioned in the show cause notice. The Appellate Authority, in respect of ground relating to setting up the unit violating the prescribed minimum distance, has found that a letter of the Town Planner cannot be the basis to make out a case of such violation. The Appellate Authority also found that the show cause notices were issued to the respondent and order of revocation of CTO were passed without basis and without ensuring that the violation alleged in the show cause notice was actually made out.

4. Another glaring irregularity found by the Appellate Authority was that the show cause notice dated 28.12.2022, which formed the basis for closure of unit was never served upon the respondent before passing the impugned order. The Appellate authority has taken note of the latest guidelines of HSPCB relating to service of show cause notice and has found that the notice was required to be served through registered post with A.D. or through e-mail. It remained undisputed before the Appellate Authority that the show cause notice was not sent through registered post. No file or document was placed before the Appellate Authority to show that the notice was sent to the respondent unit through e-mail. Hence, we find that the Appellate Authority has not committed any error in reaching to the conclusion that the impugned orders were passed without serving show cause notice upon the respondent.

5. The above aspect clearly reveals that there was utter violation of principle of natural justice and the order of cancellation/closure was 3 passed without serving any proper show cause notice. Hence, it has rightly been set aside by the Appellate Authority.

6. At this stage, learned Counsel appearing for the appellant submits that the appellant intends to take fresh action following due process and that the impugned order of the Appellate Authority may come in the way of the appellant in taking the said action. We do not think that learned Counsel for appellant is correct in this regard because in the concluding paragraph, the Appellate Authority has observed as under:

“xxxxxxxxx
31. In view of my above discussion the appeals, captioned above, have merits and are accepted. The impugned orders of withdrawal/revocation of CTO and closure of appellant units are set aside. It is, however, made clear that nothing contained in this orders will restrict the respondents from initiating any fresh action against the appellants in accordance with law. The appellants, whose CTO has lapsed by now, may apply for fresh CTO and their applications, on submission will be dealt with in accordance with law/guidelines in this regard.”

7. In view of the above, the appellant has liberty to initiate fresh action against the respondent in accordance with law and the said right of appellant is not restricted by any observation made in the order. Hence, we are of the view that the appellant can initiate action by serving a proper show cause notice and decide the issue on its own merit in accordance with law.

8. The appeal is accordingly dismissed.”

3. Since, admittedly, these Appeals are covered by earlier order of this Tribunal, therefore for the reasons assigned in the above earlier order, these Appeals are also dismissed.

4. All pending I.As also stand dismissed.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

September 18, 2023
Appeal No. 20/2023 (I.A. No. 709/2023)
Appeal No. 21/2023 (I.A. No. 710/2023)
Appeal No. 24/2023 (I.A. No. 711/2023)
& Appeal No. 25/2023 (I.A. No. 712/2023)
JG