

Item No.11

Court No. 1

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

Appeal No. 31/2023
(I.A. No. 774/2023 & I.A. No.773/2023)

M/s. Contel (Welcomhotel Bella Vista)

Appellant

Versus

Haryana State Pollution Control Board& Ors.

Respondent(s)

Date of hearing: 08.04.2024

**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. A.S. Narant & Mr. Rajat Jain, Advs. for Appellant

Respondent(s): Mr. Rahul Khurana, Adv. with Mr. Sudhir Mohan, RO, Panchkula,
HSPCB

ORDER

1. By this appeal, appellant has challenged the order dated 29.07.2023 imposing Environmental Compensation of Rs. 30,97,500/- for violation of norms for 165 days.

2. Appeal has been filed with the day, hence, I.A. No.774/2023 has been filed for condonation of delay of 39 days.

3. Having heard Counsel for the parties on the application for condonation of delay, we noticed that impugned order was passed on 29.07.2023 and plea of the appellant is that, appellant had submitted the detailed representation on 01.09.2023 with the request to the respondents to review/reconsider the impugned order. Thereafter, second representation was submitted on 21.09.2023 for review of the impugned order but the said representations were kept pending and the outer limit for filing the appeal with delay was going to expire, therefore, appellant had filed this appeal on 09.10.2023. Under Section 16 of the NGT Act,

2010 there is an initial limitation of 30 days for filing the appeal. Thereafter, delay upto 60 days can be condoned on showing the sufficient cause for the delay. In the circumstances which are mentioned in the application for condonation of delay and which are noted above, we find that the appellant has been able to make out a case for condonation of delay as sufficient explanation for the delay has been furnished. Accordingly, I.A. No.774/2023 is allowed and delay in filing the appeal is condoned.

4. Heard on merit with consent.

5. The main plank of the argument of Counsel for the appellant is that impugned order has been passed without giving proper opportunity of hearing to the appellant. Submission Counsel for the appellant is that no separate showcase notice for imposition of EC was issued and that reply filed by the appellant has not been considered while passing the impugned order.

6. Learned Counsel for the respondent has opposed the appeal and has produced the original record.

7. Having heard the Learned Counsel for the parties and perusal of the record, it is noticed that show cause notice dated 26.07.2022 was issued for closure of the unit under Section 33 A of Water Act by mentioning about imposition of EC. Appellant had submitted the detailed reply to the show cause notice on 02.08.2022 wherein the appellant had disclosed the compliance of some of the norms. Impugned order dated 29.07.2023 does not make any reference to either the show cause notice or the reply of the appellant. Explanation which has been furnished by the appellant in the reply to the show cause notice has completely been ignored while passing the impugned order. In the impugned order straightway findings have been recorded and EC has been imposed for

violation of 165 days. Plea of the appellant is that even calculation of days and treating of the appellant as large scale enterprise is incorrect as the appellant is only a medium scale enterprise. On the relevant factors which have been applied for the purpose of calculation of EC, appellant has not been heard.

8. Learned Counsel for the respondent has placed reliance upon another order dated 03.08.2022 which is stated to be speaking order, in support of the plea that reply of the appellant was duly considered. It is undisputed that while passing the said speaking order dated 03.08.2022, appellant was not heard and so-called speaking order dated 03.08.2022 was passed behind the back of the appellant. Though, submission of Counsel for the respondent is that the appellant had refused to accept a copy of the said speaking order but we do not find any reliable material to accept such a plea.

9. Hence, we are of the opinion that the impugned order dated 29.07.2023 has been passed without complying with the Principles of Natural Justice and without giving proper opportunity of hearing to the appellant, therefore, it cannot be sustained and is accordingly set aside with a direction to the respondents to give proper opportunity of hearing by fully complying with the Principles of Natural Justice and pass a fresh order in accordance with law.

10. Appeal is accordingly disposed of.

11. Pending IA is also disposed of.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

April 08, 2024
Appeal No. 31/2023
(I.A. No. 774/2023 & I.A. No.773/2023)
JG.

Dr. A. Senthil Vel, EM