

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Appeal No. 24/2022 (WZ)

I.A. No. 71/2022(WZ) & I.A. No. 72/2022(WZ)

M/s. Sterling Auxiliaries Pvt. Ltd.

.....Appellant(s)

Versus

Gujarat Pollution Control Board

....Respondent(s)

Date of hearing: 19.09.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Appellant(s) : Mr. Saurabh Kulkarni, Advocate
Respondent(s) : Mr. Maulik Nanavati, Advocate for GPCB
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ORDER

1. This Appeal has been preferred against the closure order dated 26.04.2022 as well as stay over order dated 17.05.2022 issued by the sole Respondent /GPCB.

2. During the argument, the Learned Counsel for the Appellant did not press for relief against the stay over order dated 17.05.2022.

3. Therefore, we are confining our consideration only to the closure order dated 26.04.2022.

4. In the body of the Appeal, it is submitted that the Appellant's company deals in supply of APEO-free Surfactants, Ethylene & Propylene Oxide Condensates, EO-PO Block Co-Polymers, Alkanol Amines & derivatives, P.E.G's, Glycol Ethers, Phosphated Esters, Antioxidants, specialty Chemicals, etc used in various industries.

5. The Respondent made a visit of the Appellant's unit on 03.06.2021 and inspected under the provisions of Section 23 of the Water (Prevention and Control of Pollution) Act, 1974 and proceeded to issue a closure order dated

16.07.2021 under the provisions of Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974. The said closure order was not preceded by any show cause notice or any hearing and directed the Appellant to shut down the operations within a period of 15 days. The Appellant vide detailed reply dated 16.07.2021 requested for its revocation and thereafter again reiterated the said request on 22.07.2021 assuring the Respondent that all compliances would be made and conditions in the CCA will be complied with. The Appellant issued a Bank Guarantee of Rs.15 lakhs.

6. On perusal of the replies and compliances, the Respondent issued order of stay-over dated 13.08.2021, revoking the closure for a period of three months.

7. The Respondent vide aforesaid stay order demanded orally Environmental Damage Compensation (EDC) to the tune of Rs.19.80 lakhs and the same was paid by the Appellant on 16.10.2021.

8. On 05.06.2021, there was surprise visit from the Respondent during which alkaline ponding was observed beyond ETP aeration tank from where the spillage was observed going outside the premises through the compound wall. On observation immediately the water was pumped into ETP equalization and the source was identified as the wastewater line which was going to ETP and passing through the sewerage chamber which was broken and the water was mixed with sewer water and the last chamber was overflowing. The corrective action was taken. In spite of all the efforts reported to the Respondent which were verified by the Respondent officers, the Appellant received direction of closure under section 33A Water Act 1974 on 16.07.2021 which was later on revoked as stated above.

9. Further, it is submitted that the Appellant's application for CTE amendment for stacks & hazardous waste authorization was under process, in this regard, the Respondent visited the site for verification on 03.09.2021.

Before the visit there was heavy rain and some spillage of hazardous waste and other violations were found for which another closure order was passed on 04.12.2021 under section 33-A Water Act 1974.

10. The third closure order dated 26.04.2021(impugned before us in the present proceedings) was for violation of directions contained the said notice which is annexed as Annexure A-1.

11. The Respondent vide letter dated 28.04.2022 forfeited the Bank Guarantee of Rs.30 lakhs. The Appellant filed an application for revocation of the closure on 29.04.2022 and issued a new Bank Guarantee for Rs.60 lakhs and submitted detailed reply dated 30.04.2022 by way of compliance. The Respondent ignoring the letter of compliance directed the Appellant to pay the EDC as early as possible. The Respondent demanded EDC of Rs.61.80 lakhs. The Appellant has paid 50% of the amount of Rs.30.90 lakhs under protest on 17.05.2022. The Respondent is demanding the further 50% of the amount, hence, the Appellant has approached this Hon'ble Tribunal.

12. From the side of the Respondent reply affidavit is filed on 26.07.2022 saying therein that subsequent to issuance of closure direction on 26.04.2022, the Appellant unit was inspected by the Board on 4.05.2022 and it was noticed that the unit had complied with all the directions given by the Board. Simultaneously, the application of the unit for amendment in the consolidated consent and authorization also stood allowed by the Board, thereby permitting the Appellant to deal with and dispose off hazardous waste,. Considering these aspects, the Board/Answering Respondent stayed the direction for closure by its letter dated 17.05.2022 and allowed the unit to operate and function normally. Hence, no cause of action has arisen to the Appellant because of which appeal is not maintainable.

13. Further it is mentioned that inspections carried out on 05.06.2021, 03.09.2021 and 28.01.2022 clearly demonstrate that all the precautions that were required to be taken by the Appellant for preventing pollution of environment, were lacking. Instances of non-adherence to the specified environmental norms, be they accidental or occasioned by negligence, were noticed and reported by the Board/Answering Respondent.

14. The Appellant has breached the conditions of consolidated consent and authorization and also violated the specific directions issued by the Board on 31.12.2021 while revoking the earlier closure direction dated 04.12.2021. Once it was prima facie established that the Appellant has not strictly adhered to the statutory provisions and/or violated environmental norms, the Appellant was liable to pay compensation.

15. In the present case, as the extent of damage was unascertainable, the provisional assessment was made, in accordance with the principle laid down in *Aryavart Foundation v. M/s Vapi Green Enviro Limited & Others* (Original Application No. 95 of 2018).

16. Further, it is submitted that only Interim Environment Damage Compensation has been tentatively assessed and the same shall be finally determined only after giving an opportunity of hearing to the Appellant in accordance with Principles of Natural Justice.

17. We have heard the arguments of both the sides.

18. The Learned Counsel for the Appellant states that this matter may be closed by directing the Respondent to give opportunity of hearing while determining the amount of final environmental compensation subject to the condition that the interim compensation which has been levied will be adjusted against it that seems to be genuine prayer.

19. We accordingly, direct the Respondent/Board that a written notice be issued of personal hearing to the Appellant before determining the final compensation amount and whatever figure of the amount is arrived at, in that the amount levied as interim compensation shall be adjusted.

20. Accordingly, the Appeal stands disposed of.

21. All pending I.As. are also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 19, 2022

Appeal No. 24/2022 (WZ)

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