

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

Appeal No. 25/2022 (WZ)
I.A. No. 77/2022 (WZ)

IN THE MATTER OF:

Anshika Polysurf Limited

Through its Managing Director,
Mr. Anubhav S/o Atulkumar Jain,
C-157, Preet Vihar, New Delhi-
110 092.

.....Appellant(s)

Versus

1. The Gujarat Pollution Control Board

Through its Member Secretary,
Paryavaran Bhavan, Sector 10-A,
Gandhi Nagar- 382010

**2. The Regional officer, Bharuch
Gujarat Pollution Control Board,
Bharuch, Gujarat- 392001.**

.....Respondent(s)

Counsel for the Applicant(s):

Applicant(s) : Ms. Supriya Dangare, Advocate

Counsel for the Respondent(s):

Respondent(s) : Mr. Maulik Nanavati, Advocate for GPCB

PRESENT:

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

Date of hearing : 03.08.2022

ORDER

1. The present appeal has been preferred against the closure direction dated 07.06.2022 issued under Section 5 of Environment

(Protection) Act, 1986 for violation of the Hazardous and other Waste (Management and Transboundary Movement) Rules, 2016 (to be referred in short as Rules 2016) with the prayer to quash the said direction.

2. The case of the Appellant's company in brief is that it has been granted consent and authorization by the Respondent No. 1/GPCB on 26.08.2019 which is valid till 23.06.2024 and has also got environmental clearance for the said activity under category 5(f) of Schedule of EIA Notification, 2006. The said project activity is covered in 'B Category' of EIA Notification, 2006. On 29.06.2022, the Officers of Respondent No. 1 visited the premises of the Appellant and enquired about the compliance of closure directions. It was then that the Appellant came to know that the closure directions had been issued against it. The said drastic action on the part of Respondent is in violation of the due process of law. The Appellant requested the Respondent No. 1 to grant 10 days' further time for scientific closure as the explosive/hazardous raw materials were involved which would affect the safety concerns and could lead to an accident. The Appellant had Ethylene Oxide, Butadiene, Styrene which required consumption and then only proper closure would be possible. A list of stock and consumption rate of the explosive/hazardous raw materials in the unit was provided to Respondent No. 1 upon which assurance was given by Respondent No. 1 to consider the request for extension. The Appellant had also filed an undertaking to the effect that after the receipt of permission

of extension for 10 days, the electricity connection would be voluntarily disconnected which would be helpful in safe shut down of the plant. But Respondent No. 1 directed the Dakshin Gujarat viz Company Limited, Bharuch for disconnection of electricity supply to the Appellant's unit without safe closure of the plant.

3. Further, it is submitted that the closure direction is based on the inspection of the Appellant's industry on 15.03.2022 pursuant to which, a closure direction was issued without giving any Show cause Notice. After the visit of Respondent No. 1, a detailed submission of compliance of instructions as per observation in the inspection and visit report dated 15.03.2022, was submitted. During inspection of the Appellant's unit on 15.03.2022 under Section 10 of the Environment (Protection) Act, 1986, the Respondent No. 1 admitted certain observations. It is admitted to the Appellant that it had paid hefty amount to M/s Sangam Enviro Pvt. Ltd. for lifting hazardous waste. XGN manifest for the above delivery of hazardous waste are generated with the name of receiver as Gujarat Siddhee Cement Veraval, Gujarat and JK Cement Works, Chittorgarh. The name of M/s. Sangam Enviro Pvt. Ltd. is not mentioned in the said XGN manifest. The Gujarat Siddhee Cement Limited and JK Cement Works, Chittorgarh have recognized M/s. Sangam Enviro Pvt. Ltd. as authorized transporter, hence the Appellant being the generator, gave the hazardous waste to M/s Sangam Enviro Pvt. Ltd. The Appellant has been registered as a vendor with the Gujarat Siddhee Cement Ltd. and JK Cement Works authorizing M/s Sangam Enviro

Pvt. Ltd. and on this basis, the Appellant was sending hazardous waste through M/s Sangam Enviro Pvt. Ltd. M/s. Sangam Enviro Pvt. Ltd. informed the Appellant that, A1 Traders, Transporter is its sister concern and hence payment was made in the name of M/s. Sangam Enviro Pvt. Ltd. There is no violation of requisite prior intimation to Respondent No. 1 before handing over the waste to the transporter as the Appellant had filled all the information of each manifest on XGN Portal. The Appellant had also submitted details regarding the scrap waste to M/s Sangam Enviro Pvt. Ltd. and communicated all the details to the Respondent No. 1 with the compliance report dated 23.03.2022. The Appellant is maintaining a separate register for the hazardous waste, drums of contaminated material, waste etc. But due to administrative difficulty, the Appellant could not place the same before Respondent No. 1 on the date of visit of Respondent on 15.03.2022 because in-charge employee of the Store was on leave on that day. The allegation against the Appellant's unit that it had sold AROSOLVE-777 to Ms Sangam Enviro Pvt Ltd. which was a violation as it was not mentioned in the CCA, regarding it, it is submitted that CCA dated 26.08.2019 authorized manufacturing of Fractional Distillation Products (1440 MT-Month). The AROSOLVE-777 is one of the cuts produced from Fractional Distillation Products which is a finished product, which was sold to M/s. Sangam Enviro Pvt. Ltd. being the purchaser.

4. It is further submitted that quantity of hazardous waste generated, has reached the end user within reasonable stipulated

time, hence, it cannot be said that substantial environmental damage has been caused by the Appellant.

5. It is further submitted that the closure has been issued in contravention to the Rule 4 of Environment (Protection) Act, 1986 as the Appellant has not been served with a copy of the proposed directions. The Respondent No. 1's version is that it had put the closure direction on its XGN portal on 07.06.2022, cannot be said to be a fool-proof communication to the Appellant. The time granted to take legal recourse, challenging the directions under Section 5 of the Environment (Protection) Act, 1986, is 30 days from the date of communication of the direction, but a perusal of the impugned direction would indicate that it provided only 15 days' time which itself is in contravention of the statutory provisions. Therefore, the act of the Respondent No. 1 would be treated to be in violation of Principles of Natural Justice. The unit is under ZLD (Zero Liquid Discharge). An effluent treatment plant costing Rs. 4 crores (approx.) has been installed and made operational to its optimum capacity. The Appellant has taken corrective action and appointed a new agency for transportation of hazardous waste by the name Phoenix Enterprise, with whom a Memorandum of Understanding has been signed and the said agency is having valid CCA. It shows that the intention of the Appellant has always been to abide by all the environmental norms. Therefore, as soon as the Appellant got to know about M/s. Sangam Enviro Pvt. Ltd., the Appellant appointed

Phoenix Enterprise for transportation of hazardous waste. Hence, the closure direction dated 07.06.2022 should be quashed.

6. From the side of Respondent Nos. 1 & 2, it is submitted in rebuttal that it had issued direction for closure of the Appellant's unit on 07.06.2019 (appears to be wrongly mentioned as it should be 07.06.2022) and the said direction was uploaded on the XGN (Extended Green Node) portal, immediately an SMS alert was sent out to the Appellant's unit about uploading of a document concerning its unit on the registered mobile number 9510770508 at 5:00 pm., which is evident from an auto generated report by the system. The Appellant's unit has fairly admitted that it did not check the report on XGN portal and therefore, the Appeal should be treated to be time barred because the date from which the knowledge of closure direction would be attributed to the Appellant, would be 07.06.2022 when the same was put on XGN portal, therefore, 30 days should be counted from the said date. The Appeal obviously has been filed beyond 30 days from the said date as it is filed on 08.07.2022 beyond 30 days' time limit without any delay condonation application, hence the appeal should be treated to be irregular and does not deserve consideration.

7. Further, it is submitted that the Appellant unit has in unequivocal terms accepted that it has not strictly complied with the conditions mentioned in the Consolidated Consent and Authorization (CCA). The direction for closure issued on 07.06.2022 which did not direct immediate closure of the industrial unit, rather

permitted 15 days' time to the unit/Appellant's unit to shut down its operations, which was reasonable to be allowed to remove inflammable and/or explosive chemicals alleged to be kept in the premises of the Appellant's unit.

8. Further, it is submitted that Principal Bench of this Tribunal had taken cognizance of an incident reported in Indian Express daily on 07.01.2022 wherein 06 persons had died and 20 felt sick after gas leak at an industrial area in Surat, wherein a Committee was constituted under the Chairmanship of Hon'ble Mr. Justice B. C. Patel, Former Chief Justice of Delhi High Court to ascertain and gather facts concerning the unfortunate incident. The said report was filed in Original Application No. 05 of 2022 and was uploaded on the website of the Tribunal. The Committee *prima facie* opined that Sangam Enviro Private Ltd. was illegally receiving or dealing with hazardous waste from other industrial units, who in turn were expected to be aware about the illegality of their transaction with Sangam Enviro Private Limited. It was also found by the Committee that Sangam Enviro Private Limited was discharging hazardous waste illegally into open drains and in any case was not dealing with or disposing of the hazardous waste in accordance with the protocol. The Sangam Enviro Private Limited was found to be a dubious entity, engaged purportedly in illegal activities.

9. It is further submitted that despite, the Appellant in the present case had engaged the said Company, Sangam Enviro Private Limited for disposal of the waste of the hazardous materials.

10. The Appellant has suppressed the material facts in the present case, therefore, it is not entitled for any relief as it has not come with clean hands before this Tribunal on the basis of principles laid down in *S.J.S. Enterprises v. State of Bihar* (2001) 7 SCC 166, it has been held by the Hon'ble Supreme Court that:

“As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case.”

Again in *Sunil Poddar & Ors. v. Union Bank of India* (2008) 2 326, the Court held as follows:

".....If the appellant has not come forward with clean hands, has not candidly disclosed at the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct."

In *KD Sharma v. Steel Authorities of India Limited* (2008) 12 SCC 481, it has been held that:

".....it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.....the appellant has not come forward with all the facts. He has chosen to state facts in the manner suited to him by giving an impression to the Writ Court that an instrumentality of State (SAIL) has not followed doctrine of natural justice and fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. But we have also considered the merits of the

case and even on merits, we are convinced that no case has been made out by him to interfere with the action of SAIL, or the order passed by the High Court."

The same principle was upheld in the case of G. Jayshree and others v. Bhagwandas S. Patel and Ors., (2009) 3 SCC 141. In Kalyaneshwari v. Union of India & Anr. (2011) 3 SCC 287, the principle was upheld with the Court observing thus:

"While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts".

11. Further, it is submitted that the Appellant has not stated that it had a valid Memorandum of Understanding either with Gujarat Sidhee Cement Limited or JK Cement Limited for the sale of hazardous waste to them between the periods of 2020-2022 and was making a lawful supply of waste to them. The Appellant has not been able to produce any document, suggesting that it had made reasonable verification about Sangam Enviro Private Limited possessing authorisation or having permission to buy/receive Arosolve-777 chemical, hence these acts are in clear violation of the conditions of the Consolidated Consent and Authorisation issued by the answering respondent as also against the provisions of the Hazardous Waste & Other Wastes (Management and Transboundary Movement) Rules-2016. Appellant

has admittedly sold Arosolve-777 to Sangam Enviro Private Limited which is undeniably a hazardous waste and can only be sold to a unit having requisite permission from the Pollution Control Board. Therefore, the Sangam Enviro Private Limited cannot be the genuine user. In the inspection made by answering respondent on 15.03.2022, it was found that the Appellant was regularly sending hazardous waste to "so called actual users" without having a valid written arrangement as required by conditions of the Consolidated Consent and Authorisation. The Appellant was making transport of hazardous waste, using an unauthorised transporter in violation of Provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. No material was produced by the Appellant, establishing receipt of the transported waste by intended recipient and its utilisation by the said recipient in accordance with law.

12. It is further submitted that there is no requirement under law for issuance of a show cause notice prior to issuance of direction for closure. The concept of fairness requires that the erring industrial unit is informed about the non-compliances with the environmental norms and the laws. If such restrictions as are being pointed out by the Appellant, are placed on the power of the Pollution Control Board that would frustrate the object of conferring the said power on the Pollution Control Board to issue any appropriate direction, including closure for protection of environment. The Appellant has fairly admitted that he did not have a valid Memorandum of Understanding with the actual users to whom it was supplying the hazardous waste nor any proof been provided of the receipt of the hazardous waste by these actual

users. The Appellant has not denied that transporter actually used by it i.e. DLS Tradelink and A1 Traders, for allegedly making transport of hazardous waste, were the actual user who were not authorised.

13. It is only in the event of non-compliance that the Pollution Control Board draws attention of the unit to the non-compliances and calls upon the unit to remedy the violations. In the present case, the non-compliances were pointed out to the unit post inspection on 15.03.2022, but despite sufficient passage of reasonable time, the Appellant's unit did not make itself compliant.

14. Further, it is submitted that the inspecting team have noticed violations of environmental norms during inspection carried out on 15.03.2022, however, they could not decisively determine the nature and extent of damage that may have been caused to the environment because the violations seem to have continued for over a period of 02 years. Therefore, provisional assessment of interim damage compensation in terms of the order passed by this Tribunal in *Aryavart Foundation v M/s Vapi Green Enviro Limited & others* (Original Application No. 95 of 2018) is made as the extent of damage is unascertainable. Although final determination of the compensation after giving **final opportunity** of hearing to the Appellant, will be made in accordance with principles of natural justice.

15. Further, it is submitted that the answering respondent during the oral hearing on 13.07.2022 informed the appellant unit to submit a plan for safe removal of chemicals presently lying in its premises. According to the Appellant, the chemicals have the potential to cause

explosion or mishap. But the Appellant's unit insisted for re-connection of electricity which is not permissible for running the industrial plant to consume and process the chemicals lying inside the premises as the same would amount to grant final relief to the Appellant which is prohibited under law. There are other ways of dealing and removing the hazardous chemicals which can be resorted to by the Appellant's company and the Board assured that full cooperation would be extended in the said activity. Therefore, it is prayed that the Appeal should be dismissed with cost.

16. On the basis of respective pleadings, following issues are arisen:-

- 1) Whether the closure direction dated 07.06.2022 has been passed in violation of Rule 4 of the Environment (Protection) Act, 1986 because of the Respondent not serve a copy of the proposed direction upon the Appellant's unit?
- 2) Whether Appeal has filed beyond time?
- 3) Whether the Appellant had a valid Memorandum of Understanding either with Gujarat Siddhee Cement Ltd. and JK Cement Ltd., for the sale of hazardous waste to them and was making the lawful supply of waste to them?
- 4) Whether the Appellant did not make reasonable verification about Sangam Enviro Private Ltd. possessing authorization or having permission to buy/receive Arosolve-777 chemical?

5) Whether opportunity of hearing has not been given to the Appellant regarding determination of environmental damage compensation?

6) To what relief, if any, the Appellant is entitled?

17. Issue No. 1: In this regard, the Learned Counsel for the Appellant had vehemently argued, citing Rule 4 of Environment (Protection) Act, 1986 that the Respondents should have provided them a copy of proposed direction before issuing the closure direction. For the sake of convenience, the said rule is reproduced herein below:

“4. Directions. -(1) Any direction issued under section 5 shall be in writing.

(2) The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given.

[(3-a)] The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.

[(3-b)] Where the proposed direction is for the stoppage or regulation or electricity or water or any other service affecting the carrying on any industry operation or process and is sought to be issued to an officer or an authority, a copy of the proposed direction shall also be endorsed to the occupier of the industry, operation or process, as the case may be, and objections, if any, filed by the occupier with an officer designated in this behalf shall be dealt with in accordance with the procedures under sub-rules (3-a) and (4) of this rule.”

18. In rebuttal, the Learned Counsel for the Respondents has clearly argued that it was not necessary to issue a notice by them to the

Appellant's unit prior to issuance of closure direction because in all fairness, the Appellant's unit had been informed about the non-compliances with respect to environmental norms and 15 days' time was allowed to remove those lacuna/shortcomings which they did not do and it is also argued that if such kind of restriction is put upon the power of the Respondent, the very object of the Act/Rules would be frustrated. We are convinced with the arguments raised by the Learned Counsel for the Respondent and find that sufficient time of 15 days was allowed to the Appellant to remove the deficiencies found at the time of inspection made and therefore, it cannot be held that there was any violation of Rule 4 of the Environment (Protection) Act, 1986.

19. Issue No. 2: From the perusal of closure direction dated 07.06.2022 which was placed on XGN portal by the Respondent, it is clear that the Appellant would be attributed knowledge about passing of the said direction on 07.06.2022 itself. Regarding not checking of the said information on the said portal by the Appellant, it would not mean that they did not have knowledge of the said direction which has been challenged by filing the present appeal on 08.07.2022, which appears to be delayed by one day. Hence the appeal appears to be time barred as well. This issue decided accordingly.

20. Issue No. 3: It is apparent from the evidence which has come on record as well as the pleadings that the Appellant did not enter into any MoU with Gujarat Sidhee Cement Limited or JK Cement Limited for the sale of hazardous waste to them as no such document/proof

has been provided. Therefore, the same would be treated to be a violation of the Rules of 2016. Hence, this issue decided accordingly.

21. Issue No. 4: In this regard, it is apparent from the evidence on record that Sangam Enviro Private Limited was blacklisted company because in another case, O.A. No. 05 of 2022, a Committee was constituted by this Tribunal headed by Hon'ble Mr. Justice B. C. Patel, the then Former Chief Justice of Delhi High Court which had given finding about the said company dealing illegally with hazardous waste from other industrial units. This could have come to the knowledge of the Appellant's unit very easily if any genuine attempt had been made by them. Therefore, it is apparent that they did not make any genuine effort to find out that the said company is not entitled for the sale of hazardous waste. Hence, this issue decided accordingly.

22. Issue No. 5: In this regard, it is submitted that the Learned Counsel for the Respondent has very candidly admitted that any kind of damage to the environment which happened in this case, could not be quantified in exact terms and hence, on the basis of principles laid down in *Aryavart Foundation v M/s Vapi Green Enviro Limited & others* (Original Application No. 95 of 2018), a provisional assessment of interim damage compensation has been done but when the final determination of the compensation would be made, opportunity of hearing would be given. Hence, we do not find that the Appellant has not been given opportunity of hearing, as the opportunity for the same is yet to arise. Hence, this issue decided accordingly.

23. Issue No. 6: In view of above, we find that the appeal deserves to be dismissed and accordingly Appeal No. 25/2022 (WZ) alongwith connected I.A. are dismissed.

24. However, we further direct that in case, any representation is made by the Appellant's unit for restoration of their unit before the Pollution Control Board, the same shall be taken into consideration by the Respondent in accordance with law at the earliest.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 03, 2022
Appeal No. 25/2022 (WZ)
I.A. No. 77/2022 (WZ)
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