

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 5154 OF 2021**

**SUCHEM ORGANICS PVT. LTD**

**... Appellant(s)**

**VERSUS**

**CENTRAL GROUND WATER AUTHORITY & ORS.**

**... Respondent(s)**

**WITH**

**CIVIL APPEAL NO. 5125 OF 2021**

**O R D E R**

These appeals are against an order dated 3<sup>rd</sup> June, 2021 passed by the learned National Green Tribunal in OA No. 298 of 2020. The grievance of the appellants is that the impugned order which has serious adverse consequences for the appellants has been passed without notice to the appellants or even the State Governments concerned. The learned Tribunal has directed that unless valid environmental clearance and other statutory clearances are obtained, the unit of the appellants may not be allowed to function. The State Pollution Control Board has also been directed to assess and recover compensation for illegal operation of the units on the 'polluter pays' principle.

The operative part of the impugned order is reproduced hereinbelow :-

"2. We have dealt with matter by separate orders today in O.A. No.840/2019, Ayush Garg v. UOI & Ors. And O.a. No. 287/2020, Dastak N.G.O. v. Synochem Organics Pvt. Ltd. & Ors. In relation to some of such units operating in Haryana after hearing the State and the industrial units in question. It has been held that in absence of Environmental Clearance under Entry 5(f) of the EIA Notification dated 14.09.2006, such Units cannot be allowed to operate. Relevant extract from order in O.A. No.287/2020, Dastak N.G.O. v. Synochem Organics Pvt. Ltd. & Ors. Is reproduced below :

*"7. It is clear from the stand of the State itself that prior EC is required under EIA Notification dated 14.09.2006 (Entry 5(f) of the Schedule. Once it is so there is no justification to permit function of such units in violation of mandate of law. In Almbic Chemicals v. Rohit Prajapati & Ors., 2020 scc Online 347, the Hon'ble Supreme Court has made it clear that prior EC requirement cannot be dispensed with. While it is true that having regard to the fact situation therein particularly grant of EC later, the units were not closed and instead were required to pay compensation for the period the units functioned without prior EC, it does not mean that in absence of prior EC the units can be allowed to function by paying compensation. We thus hold that without prior EC the units cannot be allowed to operate. The State has no power to exempt the requirement of prior EC or to allow the units to function without EC on payment of compensation. Same view has been tkaen in O.A. No. 840/2019, Ayush Garg v. UOI & Ors. Which has been dealt with by a separate order today.*

8. As regards the stand of the private respondents that the State has delegated power under Section 3(3) of the Environment (Protection) Act, which implies that the State could exempt EIA requirement, neither any such delegation is shown nor the Stat claims to have such power or to have exercised such power. A statement has been made on behalf of the private respondents

*as well as State that the units now stand closed. Learned Counsel for the private respondents also submitted that their units have been functioning in a bonafide manner without causing pollution. Though they did not have EC only for want of knowledge of such requirement, they had requisite consents to establish and operate which have been renewed from time to time. They wish to comply with law and have also applied for EC.*

*9. We are of the view that since prior EC is statutory mandate, the same must be complied. We have no doubt that the stand of the private respondents will be duly considered by the concerned regulatory authorities, including the MoEF & CC on merits and in accordance with law but till compliance of statutory mandate, the units cannot be allowed to function. For past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process."*

3. The above principle has to be followed in all other States where such units are functioning without prior EC. In the present application grievance is also against similar units functioning in the States of Rajasthan, UP and Punjab or any other State, in addition to Haryana for which above order has been passed. This needs to be checked by concerned statutory authorities and remedial action taken, following due process of law.

4. Accordingly, we dispose of this application with a direction to MoEF&CC, CPCB and Chief Secretaries, SEIAAs, PCBs/PCCs of all States/UTs to ensure compliance of law, following due process. They may issue appropriate directions in the matter.

A copy of this order be forwarded to the MoEF&CC, CPCB and Chief Secretaries, SEIAAs and PCBs/PCCs of all States/UTs by e-mail to facilitate compliance of the above order.

Since we have not found it necessary to issue notice, having regard to the nature of the order, we give liberty to the any party to move this Tribunal in case they are aggrieved."

The learned Tribunal found that no further action was necessary except that the State Pollution Control Board might ensure that the units do not restart functioning without requisite statutory clearance meaning thereby the environmental clearance.

Mr. Nidhesh Gupta, learned senior counsel appearing on behalf of the appellants submits and, in our view, with some justification that the order ought to have been passed after giving the appellants a notice and after affording an opportunity of hearing to the appellants. Be it noted that Mr. Gupta submitted that the unit of the appellants being functional since 1994, no environmental clearance is necessary.

We need not go into the question of whether or not environmental clearance is necessary. The decision may be taken by the learned Tribunal in accordance with law after giving the appellants an opportunity of hearing. The appellants may file their submissions and documents, if any, on which they wish to rely before the learned Tribunal.

The judgment and order impugned is set aside. The matter is remitted back to the learned National Green Tribunal for deciding the same in accordance with law after affording an opportunity of hearing to the appellants. The consequential orders shall also stand set aside. It is clarified that consequential orders are those orders which have been passed consequent to the impugned order of the learned Tribunal and not any preexisting orders.

The appeals are, accordingly, disposed of.

Pending applications, if any, stand disposed of accordingly.

....., J.  
(Indira Banerjee)

....., J.  
(J.K. Maheshwari)

New Delhi;  
September 13, 2021.

ITEM NO.12

Court 7 (Video Conferencing)

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5154/2021

SUCHEM ORGANICS PVT. LTD

Appellant(s)

VERSUS

CENTRAL GROUND WATER AUTHORITY & ORS.

Respondent(s)

(IA No.111914/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.111909/2021-EX-PARTE STAY and IA No.111915/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES )

WITH

C.A. No. 5125/2021 (XVII)

(IA No.110492/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.110491/2021-EX-PARTE STAY and IA No.110493/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 13-09-2021 This appeal was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE  
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Appellant(s) MR. Nidhesh Gupta, Sr. Adv.  
Mr. Tarun Gupta, AOR

Mr. Rachit Mittal, Adv.  
Mr. Sudhir Naagar, AOR  
Mr. Sidharth, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

The appeals are disposed of in terms of the signed order.

Pending applications, if any, stand disposed of accordingly.

(GULSHAN KUMAR ARORA)  
AR-CUM-PS

(MATHEW ABRAHAM)  
COURT MASTER (NSH)

(Signed order is placed on the file)