

BEFORE THE HON'BLE APPELLATE AUTHORITY, HARYANA
UNDER THE WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974

CASE/APPEAL NO.126 of 2021

M/s Joneja Bright Steels Private Limited, Plot No.244, Sector 24, Faridabad through Authorised signatory Amarjeet Bajaj, General Manager, Administration and Estate

....Appellant

Vs.

1. Haryana State Pollution Control Board through its Chairman
2. Regional Officer, Haryana State Pollution Control Board, Faridabad

....Respondent

Present: Shri Jitender Dhanda, Advocate for Petitioner
Shri Satbir Singh, District Attorney alongwith Shri Ramesh Chahal, Advocate for respondents

ORDER:

Appellant M/s Joneja Bright Steels Private Limited has filed this appeal against the order dated 05.08.2021 (Annexure-2) passed by Chairperson, Haryana State Pollution Control Board (HSPCB) whereby appellant unit was ordered to be closed by sealing plant, machinery and D.G. Sets alongwith direction to stop electric supply and water supply of the above said unit with immediate effect.

The appellant is involved in processing of metal surface treatment/process such as picking, electroplating, plating stripping, heat treatment using cyanide bath, phosphating or finishing and anodizing, enamellings, galvanizing etc. It obtained the Consent to Operate (CTO) valid from 01.04.2016 to 30.09.2020 vide letter dated 05.02.2016 (Annexure-3) and started its operation. CTO was further extended from 01.10.2020 to 30.09.2025 vide letter of HSPCB dated 17.08.2020 (Annexure-1).

A show cause notice was issued to the appellant on 01.02.2021 on the basis of recommendations/suggestions on deficiencies found during visit of team of Central Pollution Control Board (CPCB) alongwith officer of Regional Office, HSPCB, Ballabgarh. The recommendations/suggestions of the committee were mentioned in the show cause notice and appellant was given 15 days' time to show cause as to why their unit should not be closed. The recommendations/suggestions given by team of CPCB are not being discussed here as the same are not relevant for the purpose of disposal of this appeal.

The appellant submitted reply to the show cause notice. The Regional Officer, HSPCB, Ballabgarh Region submitted his recommendations dated 16.03.2021 to Chairperson,



HSPCB, (Annexure-R4). He commented upon the violations mentioned in show cause notice out of which some were not found at the spot. About the reply submitted by the appellant, the Regional Officer commented as follows:

“The unit has submitted the reply and stated that ETP is now functional with proper guidelines and now all the parameters are maintained. But reply submitted by the unit is not satisfactory as the unit has neither deposited performance security and sample testing fees alongwith the request for re-sampling nor submitted any documentary proof alongwith photographs (copy of reply submitted by the unit is enclosed herewith)”

He also gave his comments regarding the alleged violation/deficiencies found at the time of inspection. In final recommendations he took note of plea of appellant in reply regarding ETP wherein appellant had alleged that all the parameters were being complied for operating ETP of appellant. He held the reply as unsatisfactory on the ground that the unit has not deposited performance security and sample testing fee for re-sampling and had also not submitted any documentary proof alongwith photographs. He recommended that closure order against the appellant be issued under Section 33-A of Water (Prevention & Control of Pollution) Act, 1974. This recommendation of Regional Officer resulted in passing of the impugned order dated 05.08.2021 which reads as follows:

“Whereas, M/s Joneja Bright Steels Pvt. Ltd., Plot No.244, Sector 24, Faridabad, is engaged in the process of picking and manufacturing of Bright Bar, which is covered under red category of consent management of the Board and is polluting in nature.

Whereas, the above said unit was inspected by CPCB authorised technical institution consisting of Dr.Sirajuddin Ahmad, Professor, JMI, New Delhi, Mr.Afzal Ansari, Research scholar, JMI, New Delhi, Mr.Modh Javed, Research scholar, JMI, New Delhi, Mr. Faiz Anwar, Research scholar, JMI, New Delhi and Sh.Randeep Sindhu, AEE, HSPCB, Ballabgarh Region on 02.12.2020 and reported the following violation made by the unit during inspection under Water Act, 1974/Air Act, 1981:- 1. ETP was non-operational and OCEMS sensor was in stored water.

Whereas, Show Cause Notice for closure was issued to the above said unit by Regional Officer Ballabgarh Region vide his letter no.5899 dated 01.02.2021. RO reported that the copy of show cause notice was sent to by post, but the unit fails to comply/submit reply.

Whereas, Regional Officer, Faridabad Region vide his letter no.6272 dated 16.04.2021 has recommended for taking closure action against the unit under Section of 33-A Water (Prevention & Control of Pollution) Act, 1974 which has been examined and it has been found that the unit has violated the provisions of Water (Prevention & Control of Pollution), Act 1974 as mentioned above.

Therefore, keeping in view of the above said facts and in exercise of the powers conferred under Section 33-A of Water (Prevention & Control of Pollution) Act, 1974, it is hereby ordered with the directions to close down the



operation of the above said unit M/s Joneja Bright Steels Pvt. Ltd., Plot No.244, Sector 24, Faridabad by sealing its plant, machinery, DG Sets alongwith directions to stop the electric supply and water supply of the above said unit, with immediate effect.

In addition to above it is also intimated that non-compliance to direction issued under Section 33-A of Water (Prevention & Control of Pollution) Act, 1974 is an offence under the provision of Water (Prevention & Control of Pollution) Act, 1974."

I have heard learned counsel for appellant Shri Jitender Dhanda, Advocate and learned District Attorney Shri Satbir Singh accompanied by Shri Ramesh Chahal, Advocate for respondents.

Learned counsel for appellant has argued that regarding the recommendations/suggestions which find mention in the show cause notice, the appellant has given detailed reply and most of the violations were not found existing at the spot. The Regional Officer while giving his recommendations was very casual and did not visit the spot to find the real facts as per the reply of appellant. The Regional Officer, HSPCB, Ballabgarh Region has taken note of the reply filed by appellant and has mentioned in his recommendation that "the unit has submitted the reply and stated that ETP is now functional with proper guidelines and now all the parameters are maintained". Instead of examining the veracity of the submission of the appellant, he proceeded further to record that the reply submitted by the unit was not satisfactory. He has nowhere stated in his recommendation that the facts stated in the reply by the appellant were found incorrect. Instead of considering the facts mentioned in the reply in a diligent manner, he recommended the closure of the unit in a mechanical manner and the competent authority also followed his recommendations without applying its mind.

The Chairperson, HSPCB committed further blunder while passing the impugned order by recording in his order that the appellant had failed to comply/submit reply to the show cause notice. As per the impugned order ETP was non-operational and OCEMS sensors were in stored water. The respondent in their detailed reply had submitted that the ETP plant was functional and OCEMS sensor had also been dropped in ETP outlet at proper place. None of the plea raised by the respondent in the reply was either held to be incorrect or any attempt was made to get the same verified.

Learned District Attorney and counsel for respondent have fairly conceded that reply to show cause notice was filed by the appellant. They could not defend the impugned order to the extent it mentions that "the unit failed to comply/submit reply".

The order of closure of a unit has serious consequences as it not only affects the owner of the industry/unit but also impinges on the livelihood of several workers who feed their



families from the wages/salaries they get from the unit. It is expected that any authority conferred with power under a statute to pass such type of order shall apply its mind and give opportunity to the defaulting unit/industry to show cause about the violations/shortcomings alleged against them including the opportunity of personal hearing. If a plea is raised by an industry/unit in reply, it is required to be considered and a finding should be recorded as to whether the same were factually correct/were found incorrect on enquiry or the unit/industry has failed to produce any document as sought to be produced in support of its contention.

The perusal of the impugned order shows that the authority while passing the impugned order has not applied its mind and has barely followed the recommendations of the Regional Officer, HSPCB, Ballabgarh Region. The impugned order suffers from following deficiencies.

- a) It is a non-speaking order.
- b) Reply of the appellant to show cause notice was not considered.
- c) The impugned order is factually incorrect while recording that the unit (appellant) had failed to comply/submit reply.

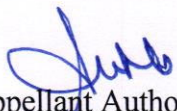
In view of the above discussion, this appeal has merit and is accepted. The impugned order being not sustainable in the eyes of law, is set aside with direction to HSPCB as follows:

- i) The Board will consider the reply to the show cause notice filed by the appellant.
- ii) It will verify the facts mentioned in reply to show cause notice by making enquiry/by giving the appellant opportunity of personal hearing.
- iii) Pass a reasoned/speaking order to dispose of the show cause notice dated 01.02.2021.

As the respondent Board has passed the closure order with the observation that appellant has not filed reply to the show cause notice, while it is an admitted fact that the reply to the show cause notice was filed and even find mention in the recommendations of Regional Officer, HSPCB, Ballabgarh Region (Annexure-R4), the appellant has been put to unnecessary inconvenience and to suffer expenses of filing this appeal. He had to deposit fee of Rs.20,000/- (rupees twenty thousand) for filing this appeal. As the impugned order is based on factually incorrect proposition and has not considered the reply of appellant, I am of the considered opinion that appellant should not only be compensated for the fee deposited in this appeal, but also for the expenses borne in filing the appeal. In view of the above facts, I impose a cost of Rs.50,000/- (rupees fifty thousand only) on the respondent Board towards expenses of filing this appeal which will include the amount of fee paid by the appellant for filing this appeal. This amount be

paid/deposited in the account of appellant within a period of three months from the date of this order. Copy of this order be supplied to the parties.

Dated 30th August, 2022


Appellant Authority