

**BEFORE THE HON'BLE APPELLATE AUTHORITY, HARYANA  
Under the Air (Prevention & Control of Pollution) Act, 1981 and  
Water (Prevention & Control of Pollution) Act, 1974**

**CASE/APPEAL NO.130 of 2021**

M/s ADGEL Corporation Village Jatola, Palwal through its partner Sanjeev Jain.

....Appellant

Vs

1. Haryana State Pollution Control Board through its Secretary, Sector 6, Panchkula
2. Regional Officer, Haryana State Pollution Control Board, Palwal

....Respondent

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

**The Appeal of M/s ADGEL Corporation village Jatola, Palwal through its partner Sanjeev Jain under Section 31 of the Air (Prevention and control of Pollution) Act, 1981 against the order dated 06.08.2021 (Annexure A-2), refusing consent to establish to the appellant-unit.**

**ORDER:**

1. Aggrieved by the order dated 06.08.2021 (**Annexure-2**) passed by Regional Office Palwal of Haryana State Pollution Control Board, Appellant ADGEL corporation has filed the present appeal under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 28 of the Water (Prevention and Control of Pollution) Act, 1974.

2. Impugned order reads as follows:-

“Please refer to your application no.13028699 dated 2021-06-23 received in the Board for consent to operate under Water (Prevention and control of Pollution) Act, 1974 and Air (Prevention and control of Pollution) Act, 1981.

Your above referred application has been examined by the Board and it has been established that the application submitted by you is incomplete and not conforming to the requirement of the provisions of the Water (Prevention and control of Pollution) Act, 1974 and Air (Prevention and control of Pollution) Act, 1981, as per policy of the Board. Accordingly, show cause Notice for refusal of consent under above said Act containing the said shortcoming/incompletion was issued by the Board on dated **2021-08-03**. But you have failed to submit the satisfactory reply of the above said show cause



notice and submit compliance of the observations. You have failed to take corrective measures the shortcomings and incompleteness in your application as per given below:-

The unit has submitted the reply and showing that the unit has made expansion in their plant and machinery at site without obtaining the CTE Expansion from the Board, please clarify, 2. Reply of SCN not found satisfactory 3. Previous reply indicate that the unit has made expansion in their plant and machinery at site without obtaining the CTE Expansion from the Board as per the observation of the HQ, the unit has already submitted that the unit has made expansion in plant and machinery Total Rs.172.94 lacs during the tenure 2017-2020.

In view of the above stated facts, the consent under Section 25 of the Water (Prevention and control of Pollution) Act, 1974 and under Section 21 of Air (Prevention and control of Pollution) Act, 1981 sought vide your above referred application, is hereby refused due to the above shortcomings/incompleteness.

In future, your unit would be discharging effluent into the atmosphere at your own risk in violation of the above said Act and rendering yourself liable for legal action under Section 43/44 of the Water (Prevention and control of Pollution) Act, 1974 and Section 38/39 of Air (Prevention and control of Pollution) Act, 1981.”

3. The Appellant was earlier allowed consent to operate on its application dated 17<sup>th</sup> of January, 2017 (**Annexure A-1**). Fresh consent to operate was applied for the period 01.10.2021 to 30.09.2023 vide application (**Annexure A-9**). The Regional Office Palwal issued show cause notice dated 01.07.2021 (**Annexure A-10**) intimating the Appellant that his application is incomplete and did not confirm the provisions of the Air and Water Act. The Appellant was directed to take corrective measures for the deficiencies in its application which were indicated as follows:-

1. *Not submitted the Proof of deposit of required and applicable consent fee.*
2. *Not submitted the Power of attorney/authority letter to sign the application.*
3. *Not submitted the copy of CA or CA certificate w.r.t. capital investment cost of the unit for the preceding year. (Capital investment cost should include the original cost of land, building, plant & machinery without depreciation.*
4. *Not submitted the latest inspection report and analysis reports of effluent/air emissions/noise conducted by Board officer (s) for the mandatory inspection, if conducted.*
5. *Not submitted the Copy of fresh analysis reports of effluent/air emissions/noise analysed from Board's lab/recognized lab. (not more than 03 months old).*
6. *Not submitted the Permission of the concerned authorities for disposal of the effluent in to sewer/drains etc (in case not submitted earlier).*
7. *Not submitted the detail of land in case the effluent is discharged on land for percolation or for irrigation along with copy of registered agreement made with*

*the land owners in case the land belong to the persons other than the land of the applicant unit (in case not submitted earlier).*

8. *Not submitted the copy of logbook for last 03 months maintained for operation of ETP/STP/APCM for the record of energy and chemical consumption, quantity of effluent at inlet and outlet of ETP/STP supported with readings of magnetic flow meters alongwith quantity of treated effluent recycled/reused in the process, utilized in the premises and discharged, mode of disposal.*

4. This notice was duly replied. The Appellant vide letter dated 21.01.2020 (**Annexure A-6**) had already intimated that they were using PNG gas and ETP which was installed in their unit was not in use any more. The Appellant also informed the respondent that it was not discharging any waste water inside or outside the factory.


5. The details of other show cause notices issued by the Appellant are not required to be discussed in detail as admittedly consent was not refused for exceeding or violating Pollution Norms as prescribed by the HSPCB. The consent to operate was refused on the ground that Appellant has made expansion in their plant and machinery without obtaining CTE from the Board. The HSPCB through its Regional Office Palwal issued another show cause notice directing the Appellant to submit the correct Capital Investment according to previous CA certificate and to explain as whether the unit had made expansion. In reply dated 29.07.2021 (**Annexure A-18**) the Appellant intimated that expansion of Rs.172.94 Lakhs has been made during the year 2017-18 to 2019-20. While explaining the above reply, the Appellant vide letter dated 03.08.2021 (**Annexure A-19**) clarified and informed HSPCB that it had not made any expansion of land or building but have only replaced and modified their old machinery. In support of their contention ledger account (**Annexure A-20 to A-22**) has been placed on file to show that the expenses in the year 2017-18 to 2019-20 were towards replacement of machinery part, machinery and its repair etc.

6. Here the question is not to believe or disbelieve the Appellant for expansion/investment in their unit during the year 2017-18 to 2019-20. The Appellant in its letter (**Annexure A-18**) had mentioned the expenses of Rs.172.94 Lakhs during this period as expansion in their plant machinery. Later on it was clarified that no expansion of land, building or machinery had been made. The production capacity had also remained the same which was at the time of granting earlier consent to operate. The Appellant had requested for personal hearing vide its letter (**Annexure A-19**). It appears that despite noting the request of appellant for personal hearing in his order dated 03.08.2021, the Regional Officer Palwal did not pass any order allowing or refusing it



and this fact is evident from the noting of concerned officer on 03.08.2021 (**Annexure A-11 colly**).

7. Before proceeding further it will be relevant to have a look on the procedure prescribed by HSPCB for obtaining consent to establish and consent to operate under Water act, 1974 and air act, 1981.
8. **Guideline 2.3.1 state that no expansion in the existing industrial/ nonindustrial Sector/ project / unit covered under consent management will be done without prior CTE of the board.**
9. Guideline 3.3.4 state that the consent to operate will be renewed only in those cases where there is no change in the raw material, process, product, increase in overall capital investment cost on land, building, plant and machinery, production capacity and also in pollution load of the unit and will remain the same as declared in the original application for obtaining previous CTO.
10. As per the above guidelines an industry or an unit cannot seek renewal of consent to operate if there is change in raw material or increase in capital investment over the land, building, plant, machinery or production capacity. In the present case consent to operate was refused on the ground that unit has made expansion in their plant and machinery at the site without obtaining the CTE extension from the board.
11. Guideline 1.17 says that the unit which intend to increase quantity of effluent or number of outlets or number of stacks/source of emissions, as compared with the quantity for which consent to establish and consent to operate was previously granted or intend to make any expansion in the existing project or change in manufacturing process, such unit will obtain the fresh prior consent to establish, for such change. In case the change of machinery of latest technology in existing unit without increase in production or without any change in the manufacturing process, there will be no need to obtain fresh CTE.
12. It is clear on perusal of the above guideline that where an industry or unit has gone for change of machinery of the latest technology without going for increase in production or without any change in the manufacturing process there will be no need to obtain fresh CTE. The question which arise for consideration is as to whether before passing the impugned order, refusing the consent to operate, the respondent had verified that appellant has contravened any of the provisions of guidelines 2.3.1, 3.3.4 or 2.2.4. Guideline 2.2.4 says that the consent to establish will be renewed on the basis of self-certification only in those cases where there is no change in the raw material, process,



product, increase in overall Capital investment cost of land, building, plant and machinery, production capacity and also in pollution load of the unit and will remain the same as declared by the unit in its original application submitted earlier to the board for obtaining 1<sup>st</sup> CTE.

13. The Regional Officer, Palwal concluded in the impugned order that reply of appellant to show cause notice was not found satisfactory. He has however not elucidate it as to why the reply was not satisfactory. Any authority exercising statutory powers is required to record reasons in support of its order. The Regional Officer Palwal, while passing the impugned order observed that the previous reply by the appellant indicate that the unit had made expansion in their plant and machinery at the site without obtaining the CTE extension from the board. This observation was made 'as per observation of HQ (headquarter). The regional officer neither tried to enquire from the appellant nor made any attempt to ascertain by visiting the spot that the appellant had gone for any expansion and the plea later on taken by the appellant in their reply that they have replaced and modified old machinery but have not carried out any expansion in their land or building was not correct. He made no attempt to verify this fact from the account books of the appellant.
14. All industries/units are duty bound to adhere to the guidelines issued by HSPCB and to strictly comply with the provisions of Water act 1974 and Air act 1981. Learned district Attorney and advocate representing the respondent have fairly submitted that there are no allegations of violating the pollution norms against the appellant. My Learned predecessor vide order dated 06<sup>th</sup> of January 2022 had directed the respondent to inspect the unit and submit a report within 10 days whether the capacity of the unit has been expanded. The respondent did not comply with that order or submitted report about the production capacity of the unit. Even in the reply filed by the respondent there is nothing that the appellant have increased their production capacity.
15. It is correct that respondents in their reply to show cause notice have stated that they have made expansion to the tune of Rs.172.94 lakhs in the unit, but immediately thereafter clarified that there is no expansion rather the spendings are on replacement and modification of machinery. The respondent could verify the plea taken by the appellant by calling for the record, Ledger account, bills of purchase of machinery or by visiting the spot. The respondent has not taken note of the provisions of guideline 1.17 to verify if any machinery of latest technology has been installed without increasing the production and changing the manufacturing process.



16. On 17<sup>th</sup> of July 2021 AEE II of respondent had requested for inspection and collection of sample from the unit. His request was forwarded by regional officer Palwal to senior environmental engineer who directed to check previous and present CA certificate of appellant to verify the fee deposited by unit and also to verify as to whether unit had made expansion. On the basis of the reply of appellant AEEII recorded that unit had made expansion. On 03/08/2021 AEEII recorded a note that unit has made expansion in their plant and machinery without obtaining CTE extension from the board, as such CTO be refused. However no reference to reply submitted by appellant on 3<sup>rd</sup> of August 2021, wherein it was clarified that no expansion had been made, was recorded in the note. The receipt of this reply dated 03.08.2021 annexure A 19 is not disputed. The appellant had sought personal hearing and this was recorded in the note sent to regional officer at 14:40 PM on 3<sup>rd</sup> of August 2021 that request for personal hearing has been made by appellant. AEEII recorded another note on 3<sup>rd</sup> of August 2021 at 20:12 PM that appellant had requested for grant of personal hearing but he avoided to record that appellant have clarified their plea regarding expansion in the unit. He ordered to issue final reminder to the unit for submitting all relevant documents up to 5 PM on 04.08.2021. The regional officer Palwal recorded a note at 20: 16 PM on the same day wherein he also took note of the request of appellant for grant of personal hearing on 4<sup>th</sup> of August but made no order to allow or reject the same. He also directed to issue final reminder to the appellant for submitting all relevant documents up to 5 PM on 4<sup>th</sup> of August 2021 (the date has been wrongly recorded as 4<sup>th</sup> of March). On 5<sup>th</sup> of August 2021 AEEII made recommendation to refuse application of appellant for CTO which was approved by regional officer on 6<sup>th</sup> of August 2021 with the noting "Refused".

17. From the above discussion it is evident that the regional officer of Haryana state pollution control board had neither applied mind nor verified the claim made by the respondent in their letter dated 03.08.2021 (Annexure A-19) that they have not made any expansion in their unit or called for any document to verify it. The request by the appellant to grant personal hearing to explain their point of view was neither considered/accepted nor rejected. When a statutory authority is passing an order resulting in closing of business or industry/unit, it has to be very careful and ensure that the provisions of law and principle of natural justice are fully completed. The impugned order passed by respondent is not sustainable particularly when the appellant had raised the plea that it had not gone for any expansion in its unit but has only modified and



replaced old machinery, a fact supported by the copies of Ledger account annexure 20 to 22.

18. In view of my above discussion this appeal has merits and the same is accepted. The impugned order dated 6<sup>th</sup> of August 2021 passed by respondent No.2 is set aside. The respondents are directed to proceed further with the show cause notice from the date of reply filed by appellant on 3<sup>rd</sup> of August 2021. Before passing any order on the show cause notice, the respondent will make an enquiry regarding the plea of appellant that they have not made any expansion in their unit. The respondent may call for any document for enquiry or visit the spot and provide opportunity of personal hearing to appellant before passing final order on the application of appellant No.13028699 dated 23<sup>rd</sup> of June 2021 seeking Consent to Operate under the provisions of Water (Prevention & Control of Pollution), Act 1974 and Air (Prevention & Control of Pollution), Act 1981. The entire process will be completed by respondent within 08 weeks of receipt of copy of this order. Copy of this order be supplied to the parties.

Dated 30<sup>th</sup> August, 2022

  
Appellant Authority