

**BEFORE THE HON'BLE APPELLATE AUTHORITY, HARYANA
UNDER THE WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974 AND
AIR (PREVENTION & CONTROL OF POLLUTION) ACT, 1981**

CASE/APPEAL NO.22 of 2022

M/s Kawaljeet Singh Batra, through its Proprietor Kawaljeet Singh Batra son of Shri Makhan Singh, Village Galauri, Sadhaura Block 39, District Yamuna Nagar

....Appellant

Vs.

1. Haryana State Pollution Control Board, C-11, Sector 6, Panchkula through its Chairman
2. Regional Office, Yamuna Nagar Region, SCO No.131, Sector 17, HUDA, Jagadhari, Yamuna Nagar, through Regional Officer

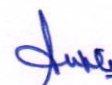
....Respondent

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

ORDER:

The appellant has challenged the order dated 14.06.2022 whereby the appellant unit was ordered to be closed for violation of provisions of Water (Prevention & Control of Pollution), Act 1974 and Air (Prevention & Control of Pollution), Act 1981. He has also challenged the order dated 17.08.2022 whereby consent to operate granted by respondent to the appellant unit was cancelled/withdrawn.

The show cause notice for closure of the appellant unit (A18) is based on the inspection report of team of Mining and Geology Department, Haryana which visited the spot on 09.03.2021 and again on 28.05.2021 for re-inspection. As per the respondents, the report of officials of Mining and Geology Department, Haryana indicated violation of terms and conditions of CTO granted to appellant. The Mining & Geology Department, Haryana initiated action on the basis of inspection report and imposed penalty for illegal excavation vide order dated 30.06.2021 (Annexure-9). This order was later on modified vide order dated 15.07.2022 passed by the Director General, Mines & Geology Department, Haryana (Annexure-13). Thereafter, the mining operations of the appellant were suspended vide order dated 14.10.2021 (Annexure-14) and the appellant was directed to show cause as to why its mining contract be not terminated. The appellant preferred appeal before the competent authority against the show cause notice dated 14.10.2021 and the previous order dated 30.06.2021 and 15.07.2021. The appeal was accepted by the competent authority vide order dated 24.02.2022 (Annexure-15) with direction in para 12.1 and 12.2 as follows:



12.1 “The enquiry being conducted by the Department for part area out of alleged area illegally mined to establish involvement of the appellant firm in illegal mining, the said enquiry shall be carried out for the entire area for which action was initiated against the appellant firm. Accordingly, the orders dated 30.06.2021 read with orders dated 15.07.2021 and 14.10.2021 are modified to the extent that the fresh enquiry be carried out for all of the mining areas illegally mined in and around the contracted area of appellant firm as found mentioned in the inspection reports

- a) The Enquiry shall be carried out by Sh.Ashutosh Rajan, HCS, Joint Director, Mine and Geology, Sh.Deepak Hooda, State Geologist assisted by Sh.Suresh Sharma, Sr. Surveyor.
- b) The team shall also associate a technical person from HARSAC and procure satellite images to examine as to whether mining pits (detail alongwith GPS coordinates are available) found to be near the contracted areas were existing even prior to commencement of mining or were created during which period;
- c) The satellite imageries in case are not available with HARSAC, the same may be procured on payment basis without any delay from department funds available under R&R fund or any other fund;
- d) The area for which FIRs have been filed as claimed by the appellant firm be also got verified by the team to ascertain as to whether for said areas appellant firm has been directed to pay penalty for illegal mining or said area are other than that of the pits/areas for which notice was issued to them.
- e) The team of officers shall also make an assessment as to whether the area used for mining within contracted area is commensurate with the reported production by the appellant firm and in case it is not shall give clear recommendation for enabling DGMG to take further action, if any.
- f) The team enquiring the matter shall also asses as to whether mineral sold during the period of operation and quantity of mineral produced gives any idea about alleged illegal mining. The team must complete its enquiry within a period of two months and submit report to the DGMG with a copy to undersigned.
- g) The DGMG shall take fresh decision based on the same within 15 days of the receipt of the report by affording opportunity of hearing in case any decisions adverse to the interest of appellant firm are to be taken.
- h) In case the illegally mined pits are found to have been created after the mining contract was granted to the appellant firm, they shall be imposed penalty as per law.
- i) The appellant firm shall deposit a lumpsum amount of Rs.5 Crore as advance penalty which may be adjusted towards amount they may



have to pay after detailed enquiry report is submitted and as decided by the DGMG.

12.2 The mining operations of the appellant presently lying suspended may be allowed to be resumed (on the date they submit proof of depositing Rs.5 Crore in the office of mining officer, Yamuna Nagar) under strict visit by the department but after ensuring that all boundary pillars on all corner points are installed and verified again. Further, the department in the light of seriousness and sensitive area shall take adequate precautions as per following:

- a) Depute officials (Mining Guards) at the mining site to ensure that no area outside mining contact is used for mining.
- b) The Mining Officer, Yamuna Nagar shall himself carry out inspection once in a week to ensure that mining is being undertaken within contracted area as per law.
- c) Mining Officer, Yamuna Nagar shall submit reports to the DGMG clearly stating that mining was being undertaken as per Rules and regulations and in case finds any violation action taken be informed”.

The show cause notice for closure of the appellant unit was issued on 25.04.2022 which find mention of the order of appellate authority dated 24.02.2022. The concluding paragraphs of show cause notice dated 19.04.2022 (Annexure-18) issued by Regional Officer, HSPCB, Yamuna Nagar read as follows:

“Whereas regarding extraction (Mining) of boulder/gravel/sand to the extent of 1.28 lac MT from 6.4 hectares of land within the mining lease of your mining company, wherein the minerals extracted (mining) upto the depth of 10 meters beyond the permissible limits of 9 meter as prescribed by Mines & Geology Department as well as Environment Clearance issued to the mining company, beyond doubt is violation carried out by the mining company and as also responsible for violation carried out within the lease area. Whereas the environmental clearance from SEIAA was granted to your mining company for the ultimate mining depth of 9 meter only and accordingly consent to establish and consent to operate was granted to your mining company with the condition that you will comply with the various conditions of the environmental clearance granted to your mining company. Therefore, in view of the position explained above you are hereby show caused for 15 days as to why closure action/directions/orders as per provisions of Section 33 A of Water Act 1974 and Section 31 A of Air Act 1981, not to be issued/initiated/taken against your mining company/unit for the violations explained above.”

The appellant filed detailed reply to the show cause notice which is Annexure-A19.

The respondent found the reply of appellant unsatisfactory and passed order of closure of the operation of appellant and withdrawing the CTO.

Admittedly, the basis of the show cause notice is the report of the official of the Mining Department on their visit to the spot on 09.03.2021 and 28.05.2021 which have not been accepted by the appellant authority under the Haryana Minor Mineral Concession, Stocking and Transportation of Minerals and Prevention of Illegal Mining, Rules 2012 (the state Rules, 2012)

This fact has not been disputed by learned counsel for parties during arguments that as per the order of appellant authority under Haryana Minor Mineral Concession, Stocking and Transportation of Minerals and Prevention of Illegal Mining, Rules 2012 further enquiry is to be carried out by the official named in the order. Learned counsel for the appellant as well as learned District Attorney and Counsel for respondent have submitted that the enquiry report of the officials mentioned in the order of appellant authority under the above said rules has not been received so far and no further action on such report has been initiated, despite the fact that appellant authority had fixed time period to complete the enquiry and take action on enquiry report.

As per the order of National Green Tribunal dated 22.12.2021 (Annexure-R4), a report dated 07.05.2022 (Annexure-R5) was submitted by the nominated officials, wherein certain observations were made qua the mining at the spot. However, this report is subsequent to the date of show cause notice and no action has been taken on that report by the respondent, as such this, report has not been pressed during arguments.

On careful consideration of submissions of learned counsel for parties and perusal of facts of the case, I am of the considered opinion that the conclusions can be safely arrived in this appeal as follows:

- a) The basis of the show cause notice dated 19.04.2022 (Annexure-18) is the report of Mining & Geology Department, Haryana. The appellant Authority Mines & Geology Department has modified the order dated 30.06.2021, 15.07.2021 and 14.10.2021 passed by Director General, Mines & Geology Department, Haryana and directed that fresh enquiry be carried out for all the mining area illegally mined in and around the contracted area of appellant firm.
- b) Though the appellant authority Mines and Geology Department, Haryana has fixed time period for completion of enquiry and taking of further action, no such enquiry report is alleged to have been completed. This shows that the very basis of the show cause notice i.e. earlier report of Mining & Geology Department and the order passed thereon have been set aside/modified by the appellant authority.
- c) The team appointed by the Hon'ble NGT has also inspected the spot and gave its report dated 07.05.2022 (Annexure-R5) but the HSPCB has not initiated any action on this report. Learned District Attorney and learned counsel representing the respondent could not point out any positive evidence/material available with respondent for passing the impugned order ordering the closure and withdrawing/revoking the CTO. The respondent are supposed to have some

positive material on record to support the plea raised against the appellant in the show cause notice but it relied on the report of officials of Mines & Geology Department, Haryana which has not been accepted by the appellate authority under the Haryana Minor Mineral Concession, Stocking and Transportation of Minerals and Prevention of Illegal Mining, Rules 2012

In view of the above discussion, I find no merit in the impugned orders and the same are not sustainable in the eyes of law. Both impugned orders are set aside. However, the respondent may proceed afresh against the appellant on the basis of independent material regarding illegal excavation or violation of terms and conditions of CTO, if found at any stage. The respondent will be at liberty to take any action on the report of team constituted by National Green Tribunal which has given its report (Annexure-R5). Any fresh action taken against the appellant as per provisions of Water (Prevention & Control of Pollution), Act 1974 and Air (Prevention & Control of Pollution), Act 1981 shall not be affected by this order. Copy of this order be supplied to the parties.

Dated 30th August, 2022


Appellant Authority