

**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.95 of 2021**

M/s Joneja Bright Steels Private Limited, Plot No.239, 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:**

A short question which arises for consideration in this appeal is:

*“As to whether the impugned order is liable to be set aside being factually incorrect while recording that the appellant unit has not submitted reply to the show cause notice”*

The respondent issued a show cause notice for closure of appellant unit on 18.12.2020, on the ground that as per the analysis report dated 03.12.2020, the samples taken from the outlet of ETP was found exceeding the prescribed limit. The unit was directed to show cause within 15 days as to why the closure order under Section 33-A of Water (Prevention & Control of Pollution), Act 1974 be not passed.

The respondent filed reply dated 28.12.2020 on which the Regional Officer, Haryana State Pollution Control Board (HSPCB), Ballabgarh Region submitted his recommendations (Annexure-R5) to the respondent board. In Column 15 of his recommendations, he commented as follows:

*“The unit has submitted the reply and mentioned that we are an organization with very strict processes and we follow the rules and regulations as per the said norms set by the authority. As the lockdown/slowdown hit hard all across the organisations, we also lacked the manpower availability in our plant. I wish to assure you that we have taken into consideration our valuable input and rectified our shortcomings. We assure you henceforth you will not find any shortcomings in our procedures*



***as per the said norms. The reply submitted by the unit is not satisfactory as the unit has not deposited performance surety and other documents as per policy of the Board”***

Apparently, in his recommendations he found the reply submitted by the appellant as not satisfactory for the reason that the unit had not deposited performance security and other documents as per the policy of the board.

The authority conferred with power under Section 33-A of Water (Prevention & Control of Pollution), Act 1974 relied on the recommendations of Regional Officer, HSPCB, Ballabgarh and ordered the closure of the operations of appellant unit. This fact was specifically recorded in the impugned order that appellant has not submitted reply to the show cause notice. In subsequent show cause notice for revocation of Consent to Operate dated 01.02.2021, the respondent admit submission of reply to show cause notice, while alleging that same was not satisfactory.

As per show cause notice, the samples from the outlet of ETP collected from the premises of appellant were found exceeding limit for FE which was found to be 4.2 against the prescribed limit of 3. Appellant in their reply alleged that they have rectified the shortcomings. Even in the reply to second show cause notice for revocation of CTO, they requested for re-sampling and sent the re-sampling fee and also performance security worth Rs.2 lakhs. The impugned order dated 01.03.2021 was passed on the recommendations made by Regional Officer, HSPCB, Ballabgarh Region on 06.01.2021, which was prior to the date of issuance of second show cause notice. The Regional Officer has found the reply of appellant to show cause notice as unsatisfactory on the ground that appellant has not deposited the performance security while the reply submitted by the appellant (Annexure-6) shows that the appellant has deposited the performance security and also re-sampling fee which no where find mention in the impugned order dated 01.03.2021 which was passed on the ground that the appellant has not filed reply to the show cause notice. Consequently the answer to the question which arise for consideration is in affirmative.

The impugned order is liable to set aside on following grounds:

- i) This order has been passed without considering reply of appellant to show cause notice. Reply to show cause notice filed by appellant is on file but was ignored by authority while passing impugned order and it was wrongly recorded in the orders that reply to show cause notice has not been filed.
- ii) The impugned order was passed without considering the fact that the performance security has been deposited by the respondent alongwith his reply dated 12.02.2021 i.e. much before the passing of the impugned order and the competent authority had relied upon the recommendations of Regional Officer, HSPCB, Ballabgarh Region that reply of respondent is not satisfactory as it has not deposited the performance security. Regarding the documents required to be submitted by appellant, nothing has been pointed out by the



learned counsel for the respondent and there is no contention of the respondent that the appellant has to file any document for re-sampling  
iii) The impugned order is cryptic, non-speaking, unreasoned and has been passed in a mechanical manner on the basis of the recommendations/report of the Regional Officer, HSPCB, Ballabgarh Region.

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 and allow opportunity of personal hearing before passing order on show cause notice dated 18.12.2020 and 01.02.2021 (**Annexure R4 & R6**).
- ii. Pass a reasoned/speaking order to dispose of the above show cause notices within six weeks of receipt of copy of this order.

The order of closure of a unit has serious consequences as it not only affect the owner of the industry/unit but also impinge 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.

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 finds 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 which includes the amount of fee paid by the appellant. 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 30<sup>th</sup> August, 2022

  
Appellant Authority