

Present: Shri Naveen S. Bhardwaj, Advocate counsel for appellants
Shri Ramesh chahal, Advocate for the respondent.

Vide separate order of even date, appeal ^{is} dismissed. Copy of order be supplied to parties free of costs. *copy of this order be placed in connected files.*

Dated 15.12.2022


Appellate Authority

Before the Appellate Authority constituted under the Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act, 1974, New Civil Secretariat, Haryana Sector 17, Chandigarh

Appeal No. **117 of 2021**
 122 of 2021
 134 of 2021

Date of Decision: 15.12.2022

1. Appeal No.117 of 2021

M/s Lakshmi Stone Crusher, Kultajpur Road, Village Lutufpur, Tehsil Narnaul, District Mohindergarh through proprietor Pramod Yadav Wd/o Late Rajinder Yadav, Age 67 yrs, Shiv Colony, Behind Punjab National Bank, Mohindergarh Road, Narnaul, District Mohindergarh

2. Appeal No.122 of 2021

M/s Karota Stone Grinding, Village Karota, Tehsil Narnaul, District Mohindergarh through proprietor Pankaj Aggarwal S/o Sh.Rudra Mal Aggarwal, Aged 42 years, resident of Opposite Police Station, Near Aggarsen Chowk, Narnaul

3. Appeal No.134 of 2021

M/s Bhagwati Stone Crusher, Village Mandlana, P. O. Dharsu, Tehsil Narnaul, District Mohindergarh through Proprietor Pardeep Yadav S/o Sh.Bishamber Dayal, Aged 34 years, Village Mandlana, Tehsil Narnaul.

.....Appellants

Versus

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

.....Respondents

Present: Sh.Naveen S Bhardwaj, Advocate for appellants.
Sh. Ramesh Chahal, Advocate for respondents.



ORDER**Appeal No.117 of 2021 M/s Lakshmi Stone Crusher**

The appellants stone crushing unit was allowed CTE/NOC on 08.03.1994 by the HSPCB. The appellants has alleged that it was established as per the norms mentioned in the notification dated 09.06.1992 and 10.02.1988 (Annexure-1) relating to distance from various installation. The above notifications were amended on various occasions viz. 04.08.1992, 24.11.1992, 04.12.1992, 18.12.1992, 08.12.1993, 18.03.1997 and 11.07.1997. Vide notification dated 18.12.1997 (Annexure-4) the earlier notifications dated 09.06.1992 and all the amendments carried out therein from time to time, were superseded. As per this notification, the siting parameters with regard to National Highway/State Highway/MDR/Abadi Area/District Head Quarter etc. were not altered but some more siting parameters were added relating to distance from controlled area, Forest Area, Water bodies etc. After grant of CTE/NOC on 08.03.1994, the appellants have been complying with the norms prescribed by the respondent. It was allowed CTO from time to time and lastly on 17.02.2017 for the period from 01.04.2017 to 31.03.2022. The Department of Mines & Geology has granted permission which was valid upto to 10.03.2021. The impugned order dated 28.05.2021 (Annexure-13) was issued on the ground that the distance of the appellants from reserve forest area is 0.138 km against settled norms of 500 mtrs and 0.80 km from roads, canals, railway lines etc. against the requirement of 1 km. The appellants informed the respondent that it is within siting parameters as required for establishing stone crushing unit and has been allowed CTO and consent to establish from time to time. All the required pollution control devices have been installed and there was not even a single instance prior to 2012 whereby any action had been taken by respondent against the appellants.

The respondent issued another notification dated 11.05.2016 Annexure-6.

Item no.III of the said notification reads as follows:

*“Item No III Non-complying units to be shifted
All the stone crushing units, which do not meet the siting criteria prescribed in this Notification shall have to shift to a site meeting the siting parameters as per Schedule-I of this Notification or to identified zone depending on availability of vacant sites in the zone, within three years from the date of issuance of this notification which is extendable for another one year provided that stone crushing unit procures the land for a site meeting the siting norms as per this notification, before the expiry of three years and had applied to Haryana State Pollution Control Board”*

As per the guidelines issued by respondent vide order dated 23.06.2016 for implementation of notification dated 11.05.2016 all the stone crushing units which were established in the area outside the approved crusher zone on the date prior to the date of notification i.e. 11.05.2016 but failed to meet any/some/all the norms for setting up of stone crusher were required to give an undertaking that they will shift their units within three years.

Now the notification dated 11.05.2016 has been again amended vide fresh notification dated 04.04.2019 (Annexure-9) whereby another criteria of maintaining distance of 0.5 km from educational institutes was incorporated and was made applicable retrospectively. Vide order dated 10.06.2019 respondent allowed further period of one year to the crusher units to fulfil the parameters as per notification dated 11.05.2016. The appellant filed CWP no.6687 of 2021 before the Hon'ble Punjab & Haryana High Court challenging the notification dated 11.05.2016 and 04.04.2019 which was withdrawn on 22.03.2021 vide order Annexure-12. The respondent have challenged the impugned order on the grounds mentioned in para 3 of the grounds of

appeal alleging that the impugned order is discriminatory/non-speaking against the provisions of law and is liable to be set aside.

Appeal No.122 of 2021 M/s Karota Stone Grinding

The appellant applied for CTO/renewal of consent for the period of 11.05.2021 to 31.03.2023 vide application Annexure-21. After show cause notice, the applicant Annexure-21 was declined. Many reasons are mentioned in the order for declining the application but in the appeal the main dispute is regarding the siting parameters of the appellant unit which were found deficient and are detailed below:

Sr. No	Distance from	Actual distance	Required distance	Remarks
1.	Village Phirni	0.900 km	1.0 km	Deficient
2.	Reserve Forest	0.194 km	0.500 km	-do-
3.	Educational Institute	0.476 km	0.500 km	-do-

Appeal No.134 of 2021 M/s Bhagwati Stone Crusher

The application of appellant M/s Bhagwati Stone Crusher bearing no.14800426 dated 06.08.2021 for allowing consent to operate under Air (Prevention & Control of Pollution) Act, 1981 was declined by the respondent vide order dated 26.08.2021 (Annexure-13). Many reasons are mentioned in the impugned order but in this appeal main dispute is regarding the siting parameters of the appellant unit which were found deficient, as mentioned below:

Sr. No	Distance from	Actual distance	Required distance	Remarks
1.	Village Phirni	0.995 km	1.0 km	Deficient
2.	Town/City/Municipal	0.0691 km	1.5 km	-do-
3.	Approved Water Supply scheme open to sky of 20 KL capacity	0.310 km	1.5 km	-do-

In reply the respondents have alleged that the impugned order dated 28.05.2021 (in case of M/s Laxmi Stone Crusher) has been passed after following due process of law as per provisions of the Air (Prevention & Control of Pollution) Act, 1981 and notification dated 11.05.2016. The appellant was originally allowed CTE/NOC on 08.03.1994 on the basis of the report received from Divisional Forest Officer and Tehsildar/DTCP. An application was moved before Hon'ble NGT on 17.09.2018 titled as Mahender Singh Vs. State of Haryana (OA No.667/2018, MA no.1355/2018 and 1356/2018). In that application it was alleged that stone crusher of Mahendergarh district were not meeting the siting parameters as per notification dated 11.05.2016. Vide order of NGT, a committee was constituted which inspected all 158 stone crushing unit in the district and found that 72 stone crushing units were not meeting siting parameters. The appellants were also not meeting the siting parameters. The siting parameters of appellants have been verified by the committee and accordingly show cause notices were issued to the appellants on 30.08.2018, 21.12.2018, 30.04.2019 and 26.06.2019. The reply to the show cause notices was found unsatisfactory and vide order dated 28.05.2021, the CTO allowed to the appellant (M/s Laxmi Stone Crusher) was revoked, while similar orders were passed for other appellants on different dates. All other averments in the ground of the appeals have been contested, controverted and denied.

I have heard learned counsel for the parties and gone through the file with their assistance.

The facts of the case are not disputed. The appellants are also not denying the plea of respondent regarding siting parameters of their appellant units. So far as the notification dated 11.05.2016 is concerned, it was challenged before the Hon'ble Punjab & Haryana High Court by the appellant (M/s Karota Stone Grinding)

but it withdrew the writ petition on 22.03.2021. Hon'ble Divisional Bench of Punjab & Haryana High Court observed that the notification dated 11.05.2016 is being implemented and the appellants have given undertaking accepting the same. The order passed in CWP 6687 of 2021 filed by appellant M/s Karota Stone Grinding reads as follows:

"When confronted with the fact that the petitioners have filed this petition in the year 2021 challenging the notification dated 11.05.2016 (Annexure P-8), after it is being implemented and after giving an undertaking accepting the same, learned counsel for the petitioners prays for withdrawal of the writ petition, as the petitioners wish to pursue their other remedies."

In view of the above facts, the appellants are not left with any arguments to challenge the notification dated 11.05.2016.

The closure orders in all these appeals have been passed after issuance of show cause notice and taking reply. The appellants are not complying with siting parameters which were found short as discussed on Page 2 (regarding M/s Laxmi Stone Crusher and Page 4 for other appellants). Learned counsel for the appellants has not challenged these parameters of appellants. He has argued that as per new draft notification dated 11.11.2022 issued by the respondent, the siting parameters have been changed and if that notification is implemented, the appellants will be in a position to apply for CTO as per the revised siting parameters. He will also take the benefit of item no.4 of the draft notification as the appellant is an old establishment.

Admittedly, the appellants are not complying with the siting parameters as per the notification dated 11.05.2016 and as such are not entitled to continue the operation of stone crusher. The impugned order which has been passed on the ground that the appellants are not complying with existing siting parameters does not suffer from any legal infirmity on this score. So far as the benefit of draft notification dated

11.11.2022 which the appellants intend to take, the submission of learned counsel for the appellants are of no benefit to the appellants in this appeal for the reason, **Firstly**, draft notification has not been implemented so far and the objections have been called. **Secondly**, the respondent may vary the siting parameters mentioned in this notification when implemented. **Thirdly**, the appellant can take the benefit of this notification only when it is implemented. **Fourthly**, even if this notification is implemented, it may not have retrospective effect and appellants have to apply afresh to the respondent for taking the benefit of this notification.

In view of the facts discussed above, I find no merit in these appeals and the same are ordered to be dismissed. No order so as to cost.

Dated 15.12.2022


Appellant Authority