

Present: Shri Alok Mittal, Advocate for the appellant.
Shri Satbir Singh, District Attorney alongwith Shri Ramesh Chahal, Advocate for the respondent.

Affidavit not filed. It has been stated that the authority who passed the order dated 27.01.2022 (conveyed vide endorsement dated 28.01.2022) is abroad. However, Shri Satbir Singh, District Attorney alongwith Shri Ramesh Chahal, Advocate has submitted that he has instructions to admit that the reply to the show cause notice dated 14.12.2021 was received in the Regional Office as well as in the Head Office of HSPCB and other concerned departments. It was by omission/inadvertence that the order dated 27.01.2022 bearing endorsement of 28.01.2022, was passed with the observation that reply to the show cause notice had not been submitted.

The impugned order dated 27.01.2022 **Annexure-A3** reads as follows:

"Whereas, M/s Maanjali Cotex Pvt. Ltd. Puthar Road, Vill. Buana Lakhu, Tehsil-Israna, Panipat has established and operating the unit for processing of waste cotton/rags which is polluting in nature and is covered under Green category.

Whereas, the above said unit was visited by the Field Officer of the Board on 13.12.2021 and reported that the unit is violating provisions under the Water, 1974/Air Act, 1981 on the following grounds:-

1. *The Unit has not obtained prior CTE and CTO from the Board.*
2. *The Unit has provided cyclone with cloth bag as APCM but the cloth bag is lying open from one side and cotton dust emissions were found spread in the unit.*

Whereas, Show Cause Notice for closure was issued to the above said unit by the Regional Officer, Panipat vide his letter no.1470261/2021 dated 14.12.2021 and the unit has not submitted reply till date.

Whereas, Regional Officer, Panipat vide its letter no.1613301/2022 dated 19.01.2022 has recommended taking closure action against the unit under Section 33-A of Water (Prevention & Control of Pollution) Act, 1974 and 31-A of Air (Prevention & Control of Pollution) Act, 1981;

Therefore, keeping in view the above said facts and in exercise of the powers conferred under Section 33-A of Water (Prevention & Control of Pollution) Act, 1974 and 31-A of Air (Prevention & Control of Pollution) Act, 1981, it is hereby ordered to close down the operation of M/s Maanjali Cotex Pvt. Ltd. Puthar Road, Vill. Buana Lakhu, Tehsil-Israna, Panipat by sealing its plant, machinery and DG sets along with disconnection of the electric supply with immediate effect.

In addition to above, it is also intimated that non-compliance of directions issued under Section 33-A of Water (Prevention & Control of Pollution) Act, 1974 and 31-A of Air (Prevention & Control of Pollution) Act, 1981 is an offence."

It is evident from perusal of the above order that it has been passed without considering the reply of the appellant wherein it has controverted the issues raised in the Show Cause Notice and given their defence.

The point for determination in this appeal is, as to whether the competent authority i.e. Chairman, HSPCB has passed the impugned order without giving an opportunity of hearing to the appellant and the non-consideration of reply submitted by the appellant has resulted in miscarriage of justice.

In the Show Cause Notice, the respondent has raised following issues:

1. *Unit has not obtained prior CTE and CTO from the Board.*
2. *Unit has provided Cyclone with cloth bag as APCM but the cloth bag is lying open from one side and cotton dust emissions were found lying in the unit.*

3. *Unit has not provided any record regarding the ownership of the unit and also not provided any display board regarding name and address of the unit.*

The appellant answered all the issues in the reply and requested for withdrawal of the Show Cause Notice. However, the impugned order was passed without considering the reply of the appellant and this fact was erroneously mentioned in the impugned order that appellant has not filed any reply.

Copy of email (**Annexure-2**) shows that the appellant has submitted reply to the show cause notice within two weeks and has conveyed its copies to the offices of HSPCB. It amounts to sheer negligence on the part of official posted there that they did not place the reply on case file and the order of closure was passed with the observation that no reply to show cause notice has been filed. This has resulted in denying opportunity of hearing and caused losses to appellant due to closure of its unit, compelling it to file present appeal by depositing required fee and bearing other expenses.

Keeping in view of the above facts, the order dated 27.01.2022 is liable to be set aside on the ground that the reply to the show cause notice filed by the appellant was not considered before passing the order to close the operation of appellant unit. This has resulted in denying opportunity of hearing to the appellant before passing the impugned order which ultimately caused it inconvenience, hardship and monetary damages.

In view of these facts and my above observations, this appeal is accepted with cost of Rs.25,000/- payable by HSPCB to the appellant towards expenses for filing this appeal which also include the appeal fee of Rs.15,000/-.

The order dated 27.01.2022 (conveyed vide endorsement dated 28.01.2022) is set aside. However, the respondent shall be at liberty to pass a fresh order after considering the reply of the appellant and if required by giving it the opportunity of hearing.

Copy of this order be supplied to the parties.

Dated 26.07.2022

Appellate Authority