

128/2021

M/s Dada Mathurapuri Rubber Tyre Process Oil Company

Vs. HSPCB

Present: Shri Jitender Dhanda, Advocate counsel for appellant
Shri Ramesh Chahal, Advocate for the respondent.

Vide separate order of even date, appeal is allowed. Copy order be supplied to the parties free of costs.

Dated 24.11.2022


Appellate Authority

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

Appeal No.128 of 2021

Date of Decision: 24.11.2022

M/s Dada Mathurapuri Rubber Tyre Process Oil Co., Village & Tehsil Matanhail,
District Jhajjar through its partner Jai Bhagwan

....Appellant

Versus

1. Haryana State Pollution Control Board, C-11, Sector 6, Panchkula through its Chairman
2. Regional Officer, Haryana State Pollution Control Board, Bahadurgarh Region, Bahadurgarh

.....Respondents

ORDER:

The appellant has filed this appeal against the order dated 26.04.2021 passed by Chairman, Haryana State Pollution Control Board (hereinafter to be referred as HSPCB) whereby the appellant unit was ordered to be closed. It was also ordered that the plant, machinery, DG sets of appellant be sealed and electric connection be disconnected.

The case of the appellant in brief is that it is engaged in process of recycling/pyrolysis of waste pneumatic tyre/tyre scraps since 2018. A team of the respondent board officials inspected the premises of appellant on 23.01.2021 and took sample from ETP. Show cause notice dated 26.02.2021 (Annexure-4) was issued to appellant to the following effect:

"Whereas, your unit was inspected by the field officer of this office on 23.01.2021 and it was found that the unit was not following the SOPs devised by CPCB. As there was inadequate instrumentation for measurement and control of temperature and pressure alongwith safety interlocks in case of temperature and pressure to cut off heating of the reactor.

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The number of sensors alongwith the alarm system was provided at suitable locations throughout the plant to detect any leakage of flammable vapors from the system. Inadequate fire fitting system like sprinklers and fire hydrant with necessary pumping system and water storage was not provided.

Whereas, sample of air emission from stack attached to pyrolysis reactor was collected and sent to Board's laboratory at Hisar.

Whereas, as per A/R No.668 dt. 25.01.2021 from HSPCB Lab at Hisar shows the following parameters are exceeding the prescribed norms:-

Sr. No.	Report No. /dt.	Point of sample collection	Exceeding Parameters	Results (mg/m3)	Limit (mg/m3)
1	668 dt. 25.01.2021	Stack attached to reactor	SPM	633.3	150

Whereas, as per the analysis report it seems that Air Pollution Control Device installed is not working properly and excess pollutants are emitted in the atmosphere causing air pollution in excess".

The appellant submitted reply dated 05.03.2021 alleging that on the date of inspection, their plant was under maintenance. The appellant has installed adequate Air Pollution Control Measure (APCM) which is in working condition and this fact may be verified by the respondent. The appellant has got installed SOP devised by CPCB. There is adequate fire fighting system, like sprinklers and fire hydrant with necessary pumping system and water storage was provided at the time of inspection. After maintenance/repair, the plant had been properly working. The fire fighting system and water storage was being properly maintained and this fact can be verified by visiting the spot. It was also requested that the sample of APCM be again collected. For re-collecting the sample of treated effluent, the appellant deposited performance security of Rs.20,000/- with

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re-sampling fee of Rs.1500/- vide DD No.000900 dated 02.03.2021. It was also assured that the appellant will comply with all the directions of HSPCB and CPCB issued from time to time.

The appellant has alleged that instead of accepting the request of the appellant for re-sampling, the respondent proceeded to pass the closure order dated 26.04.2021 which is illegal, unjust and arbitrary and against the principles of natural justice. While passing the impugned order, the respondent has failed to follow its own policy of sampling (point no.4.2, 7.1) wherein it is clearly mentioned that if the sample is found exceeding parameters, the unit shall have right to apply for re-sampling after upgrading or rectifying faults of the pollution control devices installed at the site. While passing the impugned order, the respondent has failed to take note of the fact that the appellant had installed the best of APCMs and that on the date of inspection unit was not functioning being under maintenance. The impugned order has been passed without application of judicious mind as such is not maintainable in the eyes of law.

In reply, the respondent denied the averments of appellant and alleged that on inspection by the Assistant Environment Engineer on 23.01.2021 on receipt of complaint from a person from Village Matanhail, District Jhajjar about the air pollution caused by appellant, it was found that unit was not following the SOPs devised by CPCB for tyre pyrolysis plant. Sample of air emission from stack attached to pyrolysis reactor was collected and as per the report, as mentioned in the show cause notice discussed above, the parameters of air emission from the appellant unit were exceeding the prescribed limit. This led to issuance of show cause notice dated 26.02.2021. The reply filed by appellant was not satisfactory and the Chairman, HSPCB passed the closure order dated 26.04.2021.

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Learned counsel for respondent has mainly relied on the instructions issued by respondent board vide order bearing no. HSPCB/PLG/2020/1820-1847 dated 10.12.2020 copy of which has been placed on file as R-6. Learned counsel for appellant has also relied on this office order in support of his contention that on request of appellant the respondent were bound to accept the request of appellant for re-sampling after the maintenance and necessary repairs. While submitting arguments of learned counsel for appellant, Learned counsel for respondent has argued that as per these instructions the respondent were not bound to accept the request of appellant for re-sampling as appellant was found bye-passing the effluent/air emission from air pollution control device and his case was covered under instruction 1(i) of the office order dated 10.12.2020.

To have clarification regarding this office order, the Senior Environment Engineer was called for 20.10.2022 for his assistance. He did not appear on 20.10.2022 and again the case was adjourned for his presence on 10.11.2022 on which date also he did not appear and the learned counsel for the respondent could not give any reason for his non-appearance. As the required assistance from the respondent board was not coming forth, the learned counsel for the respondent was requested to explain and address arguments on the basis of aforesaid instructions.

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


Learned counsel for the appellant has argued that appellant unit has been functioning since 2018 and complying with all the instructions, guidelines issued by CPCB and HSPCB. A team of respondent visited the premises of appellant on 23.01.2021. After inspection, it took the sample or air emission from the plant which, as per the report of laboratory of respondent, was found exceeding permissible parameters. This followed the issuance of show cause

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notice and in reply the appellant alleged that plant was under maintenance on 23.01.2021. After maintenance, it was working properly and fire fighting systems and water storage had been properly maintained. The appellant requested for verification and re- drawing of sample. The requisite performance security and re-sample fee was also deposited. Instead of considering the request of appellant and passing any order to accept or reject the same, a non-speaking order dated 26.04.2021 was passed on the recommendation of Regional Officer, HSPCB, Bahadurgarh that he had not found the reply filed by the appellant satisfactory. The competent authority did not apply its own mind to the reply and the instructions issued by the board.

Learned counsel for the respondent has argued that air emission sample taken from the appellant unit were found well beyond permissible limit and as per the office order dated 10.12.2020, the appellant had to face closure and prosecution. He has argued that the re-sampling can be ordered where the unit is having adequate pollution control devices. In this case, the inspection team had found inadequate pollution control devices at the spot and this fact find mention in the show cause notice. The closure order was passed on the recommendation of Regional Officer, HSPCB, Bahadurgarh who had found the reply filed by the appellant as unsatisfactory. Even otherwise, the air emission was found many times beyond the permissible limit, which is indicative of the fact that the appellant was not having adequate pollution control device installed in its premises.

The points in issues which arise for consideration in this appeal are as follows:

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- i) Whether the closure order has been passed after due consideration of the reply filed by appellant and on application of the mind by the competent authority i. e. Chairman, HSPCB?
 - ii) Whether the respondent considered and passed any order qua the request of appellant for re-sampling?

As per the office order dated 10.12.2020, the respondent took the decision concerning the action to be taken against a unit after failure of sample of effluent/air emission. The relevant portion of the office order is extracted as follows:

“Whereas, the matter was examined by Technical Advisory Committee (TAC) in its meeting held on 23.06.2020 and 24.11.2020, wherein the policies and procedure issued by the Board from time to time with regard to action to be taken against the defaulting units under Water Act, 1974 & Air Act, 1981 were reviewed and after detail deliberations, the following decisions were taken to amend and modify the existing procedure/policies further, for effective implementation of the relevant provisions of the Water Act, 1974 and Air Act, 1981:-

1. Action against the units after failure of the samples of effluent/air emissions.

- i) In case any unit is found (i) by-passing the effluent/air emissions from pollution control devices (ii) discharging untreated effluent/air emission without installing ETP/APCD (iii) any part of ETP/APCD is found abandoned/not working (iv) found discharging effluent through borewell(s) directly in the aquifer and results of samples collected found beyond prescribed limit, closure and prosecution action may be initiated immediately against such units besides the revocation/withdrawal/cancellation of the consent to operate as per prescribed procedure/Rules/Law.
- ii) In case of units having adequate pollution control devices, if sample(s) effluent/air emission is found exceeding beyond prescribed permissible limits due to operational deficiencies as declared by the sample collecting officer(s) in sampling performa and also claimed by such unit within the period of show cause notice with documentary proof and photographs etc. alongwith their request for sampling. In such kind of cases, closure and/or prosecution action may be initiated against such units on case to case basis. However, in such cases Regional Officer is required to give the recommendations. **Keeping in view the reply of the unit submitted in reference to the show cause notice alongwith other relevant documents and fact of the case with his clear report to the effect that effluent**

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discharge/emission beyond prescribed limits happened knowingly or due to other circumstances. Accordingly, RO will submit the proposal to Head Office alongwith his reasoned recommendation and all relevant documents either for grant of permission for fresh sampling or to initiate action on the prescribed performa with rational justification as per merit of the case following the due procedure prescribed by the Board in this regard.

The sampling in such cases will be carried out by the two officers other than officers who previously collected the sample and the samples so collected will be analyzed in the Head Office Laboratory and if unit is still found violating the prescribed standards after sampling closure/prosecution action will be initiated against such beside unit beside the revocation/withdrawal/cancellation of the consent to operate as per prescribed procedure/Rules/Law.

- iii) The collection, testing and preservation of samples will be carried out as per guidelines/protocols issued/adopted by the board from time to time.”

The premises of appellant were inspected on 23.11.2021. Inspection report has been placed on file by the respondent alongwith reply. As per the show cause notice Annexure-4/R, following deficiencies were pointed out:

- a) There was inadequate instrumentation for measurement and control of temperature and pressure alongwith safety interlocks in case of temperature and pressure to cut off heating of the reactor.
- b) The fugitive emissions were evident from the site as proper scaling was not provided.
- c) Inadequate number of sensors alongwith the alarm system was (were) provided at suitable locations throughout the plant to detect any leakage of flammable vapours from the system.
- d) Inadequate fire fighting system like sprinklers and fire hydrant with necessary pumping system and;
- e) Water storage was not provided.

This fact is not disputed that air sample from stack attached to reactor was collected and sent to Board's Laboratory at Hisar and on analysis SPM level was found beyond the prescribed parameters.

The show cause notice further describes that from the analysis report it seems that Air Pollution Control Device (APCD) installed by the appellant were not properly working and excess pollutant was emitted in the atmosphere causing air pollution.

During the course of arguments, learned counsel for the respondent could not point out any guidelines of the respondent board regarding norms of adequate instrumentation for measurement and control of temperature and pressure which was required to be installed by the appellant for proper functioning of Air Pollution Control System. He also could not point out the guidelines of the respondent board regarding adequate fire fighting system like sprinklers and fire hydrant with necessary pumping system required to be installed in an industry. In the absence of any guidelines to this effect it is not possible to analyze the show cause notice which says that there were inadequate instrumentation for measuring and controlling of temperature and pressure alongwith safety interlock in case of temperature and pressure to cut off heating of the reactor and inadequate fire fighting system.

Plant was duly inspected before granting CTO which was allowed on 28.03.2018 (Annexure-1) CTO was allowed upto 31.03.2022. It is to be presumed that at the time of granting the CTO the plant was having adequate instrumentation for measurement and control of temperature and pressure alongwith safety inter locks and adequate fire fighting system. The show cause notice nowhere says as to what was the inadequacy in the system installed by the appellant to take and control emission of pollutant/pollution from the plant.

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The appellant in reply took the plea that his plant was under maintenance and carrying out repairs of the fire system and water storage was being properly maintained. He requested the respondent to verify the same and to collect sample of APCM. He also deposited the performance security and re-sampling fee.

The perusal of the closure order shows that it has been passed on the recommendation of the Regional Officer, Haryana State Pollution Control Board, Bahadurgarh. This order nowhere reflects the application of mind by the authority which passed the order. The operative part of the closure order reads as follows:

"Whereas Show Cause Notice for closure action under Section 31-A of Air (Prevention & Control of Pollution) Act, 1981 and under Section 33-A of Water (Prevention & Control of Pollution) Act, 1974 was issued to the unit by Regional Officer, Bahadurgarh vide his letter no.5052-5053 dated 26.02.2021. Unit submitted the reply to show cause notice on 05.03.2021 but same was not found satisfactory.

Whereas the Regional Officer, Bahadurgarh vide letter no.64 dated 13.04.2021 has recommended the closure order under Section 31-A of Air (Prevention & Control of Pollution) Act, 1981 and under Section 33-A of Water (Prevention & Control of Pollution) Act, 1974 against the said unit.

Keeping in view of the above facts and in exercise of the powers conferred under Section 31-A of Air (Prevention & Control of Pollution) Act, 1981 and under Section 33-A of Water (Prevention & Control of Pollution) Act, 1974, it is hereby ordered to close down the process of M/s Dada Mathurapuri Rubber Tyre Process Oil Co, Village Matanhail, District Jhajjar by sealing plant, machinery and D. G..sets alongwith disconnection of electricity supply immediately."

In the closure order even the reply and facts pleaded by the appellant find no mention. There is no order on the request of appellant for taking fresh sample regarding which he had deposited performance security and sample fee. His request was neither allowed nor declined.

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Here learned counsel for the respondent has drawn my attention to the office order of HSPCB dated 10.12.2020 and has argued that where the Air Pollution Control Device (APCD) are inadequate, the respondent was not required to take further sample on the request of the appellant. He has drawn my attention to guideline 1(i) of office order dated 10.12.2020 which have been already discussed in forgoing paras of this order. As per guideline 1(i) of office order dated 10.12.2020, (i) if any unit is found by-passing the effluent/air emissions from pollution control devices (ii) discharging untreated effluent/air emission without installing ETP/APCD (iii) any part of ETP/APCD is found abandoned/not working (iv) found discharging effluent through borewell directly in the aquifer and results of samples collected found beyond prescribed limits, closure and prosecution action may be initiated immediately against such units.

None of the deficiencies as pointed out in instruction 1(i) found mentioned in the show cause notice (Annexure-4) or closure order (annexure-2).

The learned counsel for appellant has also relied upon these rules and has argued as per Rule 1(ii) the respondent were bound to allow the request of appellant for re-sampling.

As per guideline 1(ii) of office order dated 10.11.2020 if any unit is having APCD and the sample of pollution/air emission is found exceeding beyond prescribed limit due to operational deficiencies which are required to be declared by sample collecting officer (in sample proforma) and also claimed by such unit with documentary proof and photographs alongwith their request for sampling. The Regional Officer has to give a clear report to the effect that effluent discharge/emission beyond prescribed limit happened knowingly or due to other circumstances. He will submit to the board his recommendation for granting permission for taking of fresh sample or to initiate action on the prescribed proforma as per merit of the case.

As already discussed, the appellant was allowed Consent to Operate after due inspection leading to presumption that APCD had been installed by it.

His sample taken was found beyond permissible limit as the APCDs were not operating properly or were having some deficiencies. In such case, the guidelines 1(ii) is operative against the appellant in this case. The Regional Officer, instead of following the procedure as mentioned in guideline 1(ii) of office order dated 10.12.2020 made recommendation for closure of the unit.

I have specifically enquired from the learned counsel for respondent that if sample of effluent/air emission taken from a unit is found beyond prescribed limit whether the unit should face immediate closure or should be allowed to go for rectification of deficiencies in the APCM/APCD. His reply was that where the APCD are adequate and the sample taken from unit is found beyond permissible limit, in that case an opportunity for upgrading the APCD and re-sampling can be allowed but if the APCD are not adequate in that case no such concession can be allowed. He refers to the closure notice where the APCD were referred as inadequate.

As already discussed, learned counsel for the respondent could not point out the requirement of APCD which can be termed adequate or could make out as to how the APCD which was adequate at the time of granting of CTO became inadequate. Even the show cause notice nowhere refers towards details of inadequacies in the instrumentation of APCD and fire fighting system. Show cause notice says that fugitive emissions were found from the site as proper sealing was not ensured. It is not such lapse which can be considering for passing of closure order as the unit could be required to ensure proper sealing to avoid fugitive emission.

The law is well settled that a statutory authority while passing an order is required to ensure that the order is speaking and well reasoned. It is required that the plea taken by the parties before the authority are duly discussed and opportunity of hearing may be allowed, if circumstances of the case require.

To the contrary the order passed in this case is neither reasoned nor a speaking order. It simply shows that closure order has been passed because Regional Officer, HSPCB, Bahadurgarh has recommended closure order. This order is totally silent regarding the plea taken by the appellant that his plant was under maintenance, after maintenance/repairs, the plant is working properly, firefighting system and water storage were being properly maintained. The request of the appellant for verification of the above facts on the spot and for re-sampling were neither discussed nor disallowed.

From the above discussion, I am of the considered opinion that the submission of learned counsel for the respondent that guideline 1(i) of office order dated 10.12.2020 are applicable in this case are without basis. Even show cause notice does not state the violation/deficiencies as per these guidelines. The closure order nowhere states that the request of appellant for re-inspection/re-sampling cannot be allowed in view of guideline 1(i) of office order dated 10.12.2020. The respondent must take a considerate note of the fact that if due to some wearing and tearing APCD is not properly working or there are some inadequacy or deficiencies in the APCD, it should be pointed out to the unit concerned and opportunity should be allowed to rectify the deficiencies/devices and put the entire mechanism in order within a given time. If the concerned unit fails to rectify the defects in given time, the respondent is all competent to take action against such unit as required and permissible under law.

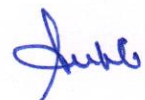
The impugned order is not sustainable in the eyes of law and is set aside. The respondent will provide opportunity to the appellant to carry on the required repairs, maintenance, to upgrade the APCD as per guideline of HSPCB/CPCB before starting operation of the unit and conduct inspection of the same within seven days of the notice by appellant to this effect that plant is ready for operation ^{after} ~~of the~~ meeting all guideline. On inspection, if some corrective measures are still required, the appellant will be given time to carry out the same

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within a stipulated period. The CTO already allowed to appellant has expired on 31.03.2022. Appellant will apply for fresh CTO which will be considered within given time as per the guidelines of the respondent board. If on grant of fresh CTO the appellant unit start functioning the respondent may take fresh sample of effluent/air emission (as required) to find as to whether the same is within permissible limit.

While going through the CTO dated 28.03.2018 (R-5) granted to the appellant I found that there is a specific condition for submission of analysis report of ETP and APCM installed within three months from board's lab. The appellant must have submitted the analysis report to the satisfaction of the respondent to maintain the level of effluent/air emission within permissible limit. A unit may like to get its samples of air and water discharge periodically tested from the lab recognized by respondent board. I have been apprised during argument that at present there are no recognized labs within limit of HSPCB where the tests could be got conducted and in the lab of respondent, the sample taken by any unit on its own are not allowed to be tested.

The respondent may allow all the units, which have been given CTO/CTE to get the periodical reports from their establishment concerning the discharge of effluent/air emission of their own from some recognized lab. This will enable the unit to take the corrective measures regarding the installation/functioning of APCD, as and when required. This will not only help the respondent in implementation of guidelines but will also help all the units which are operating under the guidelines of the respondent after obtaining CTO/CTE to maintain the level of discharge of air and water from their units within permissible limits.



The HSPCB may consider granting permission for analysis of sample from its own lab or from any lab recognized by it. If required the number/capacity of the labs working under the control of the respondent board be increased.

It is further made clear that setting aside of this closure order dated 26.04.2021 shall not effect the prosecution, if any launched by HSPCB against the appellant on the basis of analysis report dated 25.01.2021 whereby SPM level of discharge from the unit of appellant was found beyond permissible limit.

While dealing with some appeals it has been found that many time plea is raised by the respondent board that a unit applying for CTO/CTE/re-sampling or for any other purpose have not deposited the required fee or completed all required formalities. It is clarified here that it is duty of the respondent board to intimate the person concerned about the deficiencies of fee/documents or formalities, so that same may be completed, instead of raising such plea in legal forum or initiating any punitive action for not depositing fee/document or completing required formality.

Copy of this order be supplied to the parties free of cost.

Dated 24.11.2022


Appellate Authority