

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.23 of 2022

Date of Decision: 13.10.2022

M/s Durgesh Metal Industries, Mukerji Park Extension, Gauri Shankar Link Road, Jagadhari, Yamuna Nagar through its proprietor Anuj Gupta son of Anil Kumar Gupta resident of Civil Line, Jagadhari.

.....Appellant

Versus

1. Haryana State Pollution Control Board, through its Chairman
2. Regional Officer, Haryana State Pollution Control Board, Yamuna Nagar

.....Respondent

ORDER

This is appeal against the order dated 10th March, 2022 passed by Chairman, Haryana State Pollution Control Board, Panchkula, whereby operation of the appellant unit was ordered to be closed down under Section 33-A of Water (Prevention and Control of Pollution) Act, 1974 (**later referred to as Water Act**) and Section 31A of Air (Prevention and Control of Pollution) Act, 1981 (**later referred to as Air Act**) by sealing its plant, machinery and DG sets along with disconnection of electric and water supply of the appellant unit with immediate effect.

The case of the appellant is that it was set up in the year 2020 civil lines Jagadhri and shifted to the present address in December 2021. It is engaged in manufacturing and fabrication of stainless steel utensils and sanitary wares which are made from pickled mirror finish SS coils and sheets purchased from Jindal steels. It purchases hundred percent polished sheets (BA/2B/2D finish) as raw materials which are in bright/mirror finish. The appellant unit do not use process of washing or heating in any manner as the material used for finished goods is already in a mirror finish right from inception as such the provisions of water and air act are not applicable to the appellant unit.

The officials of respondent board who conducted inspection of appellant unit on 31st January 2022, alleged that the appellant unit is being operated without CTE and CTO from the

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respondent board. They also alleged that appellant has not provided water treatment facility for treatment of wastewater generated from acid washing section which was found non-operational. During their inspection no wastewater discharge was found from the premises of appellant unit.

The appellant was issued a show cause notice **Annexure A2** indicating following shortcomings:

1. Unit is operating illegally without obtaining prior CTE and CTO from the board in violation of section 25/26 of the Water Act and Section 21/22 of the Air Act.
2. Unit has not provided adequate Air Pollution Control Measure device at buffing section.
3. Unit has not installed any treatment facility/ETP for treatment of trade effluent generating from acid washing section and unit is having all the possibilities of disposing of their untreated trade effluent into outside available open sub-drain/Nallah without having any prior treatment and which is further leading into river Yamuna via Ditch drain. However no discharge was found releasing from unit during inspection as the said washing process/section was found lying non-operational.

Appellant was given 15 days' time to explain as to why action may not be taken against it by ordering closure of this unit and imposing an environmental compensation on it.

The appellant replied the notice (**Annexure A3**) wherein it denied the allegations mentioned in the Show Cause Notice. It was alleged that appellant unit is not engaged in process of electrical annealing and acid washing. The appellant alleged that the shortcomings mentioned in the Show Cause Notice are absolutely contrary to the factual position at the spot. The appellant raised following pleas in its reply:

1. Since our unit is purely dry unit wherein there is no use of acid or discharge of any trade effluent as such our unit is not covered under consent management in any manner whatsoever.
2. Since there is no air emission in our unit hence, there is no necessity to provide any APCM. There is no metal surface treatment in our unit and so there is no requirement to install or provide any device as alleged.
3. Since there is no discharge of trade effluent in any manner whatsoever the question of providing any ETP does not arise.

The appellant alleged that their unit is a pure dry unit and no process involving metal surface treatment, pickling/ electroplating /paint stripping/ heat treatment using cyanide bath/ phosphating or finishing and anodising/ enamellings/ galvanising is used for its finished products. The inspection team had not found any discharge of waste water during the course of inspection, the washing section was found lying non-operational and there was no release of trade effluent.



The appellant had shifted to this premises only 2 months back and this fact could be verified from the GST approval of address change. The area pointed out in a Show Cause Notice as non-operational, was vacant space where plastic canes and waste had been collected during cleaning of the premises after taking its possession. This area had been cleaned and the team of respondent could revisit the premises any time to confirm that appellant is a non-polluting dry unit.

Reply filed by the appellant was found not satisfactory and the competent authority vide order dated 10/03/2022 ordered the closure of the appellant unit. The operational part of the impugned order reads as follows:

Whereas, the Regional Officer, Yamuna Nagar vide his letter no.HSPCB/YR/2022/2931 dated 04.03.2022 recommended closure action against the unit under Section 33-A of Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of Air (Prevention and Control of Pollution) Act, 1981, which has been examined and found that the unit has violated the provisions as mentioned above.

Therefore, in view of the above facts, it is hereby ordered to close down the operation of the unit M/s Durgesh Metal Industries, Mukherji Park Extension, Gauri Shankar Link Road, Jagadhari, Yamuna Nagar under Section 33-A of Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of Air (Prevention and Control of Pollution) Act, 1981 by sealing its plant, machinery and DG sets along with disconnection of the electric and water supply of the above said unit with immediate effect”.

The appellant has alleged that the provisions of the Water Act and Air Act are not applicable to it as it is not carrying out any operation involving metal surface treatment or process such as pickling/electroplating/paint stripping/heat treatment using cyanide bath/phosphating or finishing and anodising/enamellings/galvanising. The respondent has alleged that appellant unit is engaged in manufacturing of stainless steel utensils using stainless steel coils/circles as raw material. The process of manufacturing involves punching, pressing, spending, beating, electrical annealing, buffing and acid washing which are both air and water pollutant, as such the appellant unit is covered under the Red Category given at Serial No.44 of respondent policy order dated 26.02.2018 and 04.12.2020. The appellant unit had started operation without obtaining prior consent to establish and consent to operate required as per the provisions of the air and water Act. The close order has been passed as the appellant unit was found violating the provisions of the Water Act and Air Act and guidelines issued by the respondent board.

Ld. Counsel for the appellant has argued that that the appellant had alleged at the time of inspection that there was no discharge of any trade effluent from their premises and they



do not use any acid or treatment plant in any of their process. Even in the inspection report **Annexure A-1** a note to this effect was given by Anuj Gupta proprietor of appellatant firm. As per inspection report, no consumption of water was found for boiler/cooling/industrial use. The factory was operational at the time of inspection but no waste water discharge was found from the premises of the unit. The acid washing process/section was also found non-operational. This gives strength to the plea raised by the appellatant that it is not using any acid etc. during manufacturing process. All the facts were duly explained in the reply to Show Cause Notice but the respondent without considering the plea raised by the appellatant passed a speaking order without application of mind which is liable to be set aside.

Ld. Counsel for respondent has argued that the appellatant manufactures stainless steel utensils and the manufacturing process of stainless steel utensils involves electrical annealing, buffing and acid washing and as per the policy of the respondent such unit falls in Red Category and requires CTE and CTO to operate. At the time of inspection, there was no discharge of trade effluent and acid washing process was not operational but these were found at the spot and the note by the proprietor on the inspection report that they do not use any acid, is of no value. As the appellatant unit was being operated in violation of the provisions of the Water Act and Air Act, the impugned order suffers from no legal infirmity and is sustainable in the eyes of law.

I have given it careful thought to the submissions of Ld. Counsel for both the parties and have also perused the file with their assistance. The question for determination which arises in this appeal is, as to whether there is any substance in the plea of appellatant that they are not covered by the provisions and guidelines of respondent board for operation of appellatant unit and secondly that the impugned order is non-speaking and has not discussed or dealt with the plea raised by the appellatant in the reply to Show Cause Notice.

An inspection team comprising of Executive Engineer, AEE of respondent, Chief Judicial Magistrate, Yamuna Nagar and a Police Inspector had visited the premises of appellatant on 31st January, 2022 and prepared a report **Annexure A1**. It found that appellatant unit was manufacturing stainless steel utensils and the manufacturing process involves punching, pressing, spinning, beating, electric annealing, buffing and acid washing. The DG set of 60 KV capacity lying in the premises of appellatant was not found in operation, no air pollution control device was found on the spot. No water consumption was found for boiler/cooling, however, one KLD (not easily biodegradable) industrial use of water was observed. The report mentions 0.5 KLD domestic and



1KLD trade quantity of effluent were there but no ETP in the premises of appellant was found. As per the respondent ETP was required for the appellant unit. In the column of hazardous waste management, the report mentions about waste water generation from acid washing section.

The remarks column of report reads as follows:

"Unit is visited by the SESTF team of district Yamuna Nagar and found the same established and operational without obtaining prior CTE and CTO from the Board. Further, unit has not provided any waste water treatment facility/ETP for treatment of waste trade effluent generating from acid washing section, however, the said acid washing process/section found not operational during visit and no waste water discharge found from the premises of unit during inspection."

The proprietor of appellant had written above his signature "we do not use acid in any of our process and hence treatment plant is not installed."

In reply to Show Cause Notice the appellant has again raised the plea that appellant unit is a purely dry unit having no use of acid or discharge any trade effluent. The respondent no.1 before passing the impugned order did not consider the plea raised by the appellant in reply to show cause notice and ordered the closure of the appellant unit with a one line observation that recommendation of Regional Officer, HSPCB, Yamuna Nagar has been examined and it was found that appellant had violated the provisions of Water Act and Air Act.

The appellant had raised a plea that the provisions of Water Act and Air Act are not applicable to the unit as it is neither using any acid nor discharging any trade effluent. The inspection team had also found that acid washing process/section as non-operational and no waste water discharge was found from the premises of the appellant unit. The appellant have alleged that they are purchasing finished SS coil and sheets from Jindal Steels. The sheets purchased by appellant are hundred percent polished sheets. It was also alleged by them that they have shifted to the premises, inspected by SESTF team, only 2 months before the inspection. The above facts were verifiable by calling the record of purchase of raw material. The inspection team has given a specific note that acid washing process/section was found non-operational and there was no waste water discharge from the premises of appellant unit. In these circumstances, it was incumbent upon the respondent no.1 to verify the plea taken by the respondent before passing the impugned order. The respondent could call for any document from appellant to satisfy itself that CTO and CTE as per provisions of Water Act and Air Act and guidelines of respondent are required by the appellant. Instead of adopting the due process and examining the plea raised by the appellant in



reply to Show Cause Notice and note on the inspection report **Annexure A1** the impugned order was passed in a mechanical manner merely on the recommendation of Regional Officer, HSPCB, Yamuna Nagar.

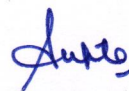
It is incumbent for quasi-judicial authority to support its order with reasoning, to examine the plea raised by the party against whom such order is passed and to pass a speaking order. When examined on these parameters, the impugned order does not fall in the category of a speaking order. Being a non-speaking order, the impugned order is not sustainable in the eyes of law.

As to whether the appellant unit fall in the category which requires CTE and CTO as per the guidelines of respondent no.1, is a fact to be determined by the respondent no.1. The appellant has alleged that they have not purchased acid for use in its manufacturing process and the raw material purchased by it is hundred percent polished sheets. All these facts can be verified by the respondent from the documents like purchase bills/GST returns, record of the company from where the raw material is purchased etc. This authority find no reason to accept or reject the plea so raised by the appellant and leave it to the respondent no.1 to look into it and pass a fresh order, in accordance with law.

In view of my above discussion, the impugned order dated 10th, March 2022 is not sustainable in the eyes of law, as such is set aside. The respondent shall have the liberty to proceed against the appellant and pass a fresh order after considering its reply. The respondent no.1 shall be at liberty to call for any document, conduct enquiry as required, inspect the premises of appellant unit and call the appellant for personal hearing, if required, before passing a fresh order.

Keeping in view the facts and circumstances of the case, the parties are left to bear their own costs. The appellant and respondents be supplied copy of this order free of cost.

Dated: 13.10.2022


Appellate Authority