

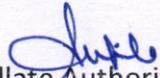
108/2021	M/s Keshav Stone Crusher	Vs.	HSPCB
109/2021	M/s Shiv Shankar Stone Industries	Vs.	HSPCB
110/2021	M/s Yamuna Stone Crusher	Vs.	HSPCB
111/2021	M/s Anant Stone Crusher	Vs.	HSPCB
112/2021	M/s Durga Stone Crusher	Vs.	HSPCB
113/2021	M/s Garg Stone Crusher	Vs.	HSPCB

Present: Shri Abhishek Singh, Advocate counsel for appellant
Shri Ramesh Chahal, Advocate for the respondent.

Arguments heard in part. Learned counsel for appellant submit that he has to address similar arguments in appeal bearing nos. **108/2021, 109/2021, 110/2021, 111/2021, 112/2021 and 113/2021.**

List on 08.12.2022 for remaining arguments in all the appeals.

Dated 24.11.2022


Appellate Authority

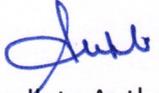
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112/2021	M/s Durga Stone Crusher	Vs.	HSPCB
113/2021	M/s Garg Stone Crusher	Vs.	HSPCB

Present: Shri Abhishek Singh, Advocate counsel for appellant
Shri Ramesh Chahal, Advocate for the respondent.

Vide separate order of even date, appeals are dismissed with cost.

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

Dated 08.12.2022


Appellate Authority

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

Appeal Nos. **108 of 2021**
 109 of 2021
 110 of 2021
 111 of 2021
 112 of 2021
 113 of 2021

Date of Decision: 08.12.2022

1. Appeal No. 108 of 2021

M/s Keshav Stone Crusher, Village Doiwala, Tehsil Khizrabad, District Yamuna Nagar through its partner Shri Munish Kumar aged about 36 years S/o Mohinder Pal (Appeal No.108 of 2021)

2. Appeal No. 109 of 2021

M/s Shiv Shankar Stone Industries, Village Kohliwala, Yamuna Nagar through its authorised representative Soni Kumar, aged about 31 years S/o Satab Singh R/o Village Bhudkalan, Yamuna Nagar (Appeal No.109 of 2021)

3. Appeal No. 110 of 2021

M/s Yamuna Stone Crusher, Village Chuharpurkalan, Yamuna Nagar through its partner Yujwinder Singh aged about 44 yrs S/o Magan Singh R/o 65, Jyoti Nagar Tejli Road, Jagadhari, Yamuna Nagar (Appeal No.110 of 2021)

4. Appeal No. 111 of 2021

M/s Anant Stone Crusher, Village Arayanwala, Yamuna Nagar through its partner Rakesh Kumar Vohra aged 59 years S/o Jagdish Lal Vohra R/o House No. 420, MDC, Sector 6, Panchkula (Appeal No.111 of 2021)

5. Appeal No. 112 of 2021

M/s Durga Stone Crusher, Village Chuharpurkalan, Yamuna Nagar through its proprietor Mrs. Kiran Mahajan aged about 61 years W/o Subhash Mahajan, R/o House No.105-L, Model Town, Yamuna Nagar (Appeal No.112 of 2021)

6. Appeal No. 113 of 2021

M/s Garg Stone Crusher, Village Gulabgarh, Yamuna Nagar through its partner Vivek Garg aged about 32 years S/o Narinder Pal Garg R/o House No.1017, Sector 17, HUDA, Yamuna Nagar (Appeal No.113 of 2021)

...Appellants

Versus

Appeal nos.108, 109, 110, 111, 112, 113 (all of 2021) Vs. HSPCB



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

.....Respondents

Present: Sh.Abhishek Singh, Advocate counsel for appellants.
Sh.Ramesh Chahal, Advocate for the respondents.

ORDER

Six appeals mentioned in the head note have been taken up together for joint disposal as the facts and issues involved in these appeals are similar. For the sake of convenience detailed facts have been taken from M/s Keshav Stone Crusher (Appeal No.108 of 2021)

M/s Keshav Stone Crusher (Appeal No.108 of 2021)

The appellant unit was established in the year 2004 at village Doiwala (Yamuna Nagar) and is engaged in business of operating stone crusher. It was allowed consent as per guideline of the respondent from time to time and the last consent was allowed from 01.05.2020 to 10.05.2021. The appellant has been asked to shift his site within three years as per the notification dated 11.05.2016 which is under challenge before the Hon'ble Punjab & Haryana High Court and stay has been granted in various petitions challenging this notification. The appellant has discussed in detail the earlier notification/guideline issued from time to time before notification dated 11.05.2016, which are not relevant to be discussed for the decision of this appeal.

The appellant has alleged that it applied for CTO for the period beyond 10.05.2021 through online portal by depositing fee and completing other formalities. The application was followed by reminder dated 11.05.2021. The respondent instead of granting CTO, issued show cause notice for closure of the appellants unit on a wrong assumption that appellants had not applied for CTO beyond the period of 10.05.2021.



The show cause notice dated 12.05.2021 was followed by another show cause notice dated 18.05.2021 and asked for a stay order from Hon'ble Punjab & Haryana High Court. The appellant approached Hon'ble High Court by filing the Civil Writ Petition No. 10068 of 2021 which was dismissed as withdrawn as the appellant wished to avail an alternative remedy. The appellant tried to submit reply of the show cause notice dated 18.05.2021 but authorities refused to accept their reply and insisted on filing an affidavit which the appellant had to submit under coercion. This followed refusal of CTO vide order dated 08.06.2021 (**Annexure-23**). This order was passed on the ground that the appellant had failed to submit any stay order from the Hon'ble High Court. The appellant was served another show cause notice dated 09.06.2021 (**Annexure-24**) for closure of appellant unit which has been issued without any basis.

The respondents have pleaded in reply that notification dated 11.05.2016 was issued by the State of Haryana to protect the environment, to maintain the ecological balance in the State, prevent degradation and to avoid terrific human health hazard. The writs filed in the Hon'ble High Court bearing no.14258 of 2016 and 27269 of 2018 by different stone crushers seeking the quashing of notification dated 11.05.2016, were dismissed. The appellant had submitted an undertaking after the issuance of notification regarding shifting of their stone crusher. They were allowed to continue the operation of the stone crushers in view of their undertaking, as such, the appellants are bound by their own act and conduct to fulfill the promise. Vide notification dated 11.05.2016, period of three years was given to the stone crushers covered by this notification for shifting which was extended by another two years in view of the writs pending before the Hon'ble High Court. Appellant had not approached the Hon'ble High Court or received any stay order like the other stone crushers, but in view of the government's decision to extend the period from 11.05.2019 to 10.05.2020 and 11.05.2020 to 10.05.2021, the CTO was allowed to the appellants. It has been alleged that the siting parameters of the unit of the appellant do not comply with the norms meant for establishing the stone crusher as per the notification dated 11.05.2016.



Earlier, the closure order was passed against the appellant unit on 14.04.2012. The appellant filed appeal no. 155 of 2012 before the Appellate Authority which was dismissed on 09.11.2012. With similar pleas, some stone crushers approached the National Green Tribunal against the order of the Appellate Authority but their appeals were also dismissed.

After closure order dated 16.04.2012 the unit of the appellant was lying closed and sealed but they took the benefit of notification dated 11.05.2016 by submitting the affidavit dated 24.06.2016 undertaking shifting of the stone crusher within three years to some other site to avail the benefit of notification. In view of the affidavit and above notification the closure order of the appellant unit was suspended and consent was allowed from 01.08.2016 to 31.03.2019 which was extended upto 10.05.2021 in view of the government direction extending the period as per notification dated 11.05.2016. The consent has been refused to the appellant as it does not comply with the siting parameters and due to this show cause notice for closure was issued.

In the other connected appeals, the facts are almost similar to the facts in appeal **M/s Keshav Stone Crusher (Appeal No.108 of 2021)**. The order/show cause notice under challenge in this appeal and year of establishment of these units are innumeraled in the table as below:

Sr. No.	Name of the Appellants Unit	Date of Order	Date of Show Cause Notice.	Year of establishment of unit.
1.	M/s Shiv Shankar Stone Industries	27.05.2021(Annexure-16)	09.06.2021 (Annexure- 17)	1991
2.	M/s Yamuna Stone Crusher	27.05.2021(Annexure-19)	09.06.2021 (Annexure-20)	1991
3.	M/s Anant Stone Crusher	27.05.2021(Annexure-17)	09.06.2021 (Annexure- 18)	1991
4.	M/s Durga Stone Crusher	27.05.2021 (Annexure- 19)	09.06.2021 (Annexure-20)	1991
5.	M/s Garg Stone Crusher	27.05.2021(Annexure-20)	09.06.2021 (Annexure-21)	1991

The case of appellants is that at the time of establishment of the stone crusher they

complied with the siting parameters and all the guidelines issued by the respondent as applicable at that time. The appellants were also issued Consent to Operate from time to time which has now been illegally revoked.

The respondents in their reply have alleged that the appellants have given an undertaking by filing affidavit that they will shift their unit as per notification dated 11.05.2016 but have not complied with the same. Even in the CWP-14258 of 2016, titled as M/s Kaithal Stone Crusher vs. HSPCB and CWP No.27269 of 2018 titled as Supreme Stone Crushers Gramodyog Samiti and others Vs HSPCB, the relief was sought to quash the notification dated 11.05.2016 on similar grounds as taken by the appellants and both the writ petitions were dismissed on 25.11.2019. The relevant portion of the order in the above writ petitions is as follows:

"3. The petitioners were ordered to close down their existing stone crushing units pursuant to the notification dated 11.05.2016. According to Item Number III of Schedule-II of the notification, all the stone crushing units, which did not meet the siting criteria prescribed in the notification were to shift to a site meeting the siting parameters as per Schedule-I of the notification or to identified zone depending on availability of vacant sites in the zone, within three years from the date of issuance of the notification, which was extendable for another one year provided that stone crushing unit had procured the land for a site meeting the siting norms as per the notification before the expiry of three years and had applied to Haryana State Pollution Control Board.

4. The period of three years has expired on 10.05.2019. No material has been placed on record by the petitioners to suggest that they have procured the land at the alternative site and have applied to Haryana State Pollution Control Board. However, the State Government on its own has extended the date by another one year, without the petitioners' procuring the alternative sites for shifting their stone crushing units to the new sites meeting the prescribed norms, and applying to Haryana State Pollution Control Board. In view of this, the interim order dated 08.02.2017 rendered in CWP-14258-2016 and the interim order dated 25.10.2018 passed in CWP-



272692018 are vacated. It shall be open for the State Government to proceed with the matter in accordance with law.

5. Both the petitions are dismissed.

6. However, it shall be open to the petitioners to shift to the available land, as mentioned in the affidavit of Mr. Shekhar Vidyarthi, Special Secretary to Government Haryana, Environment Department. It shall also be open to the petitioners to approach this Court in case they face difficulty in identification of the land.

7. All the pending Civil Miscellaneous applications stand disposed of. ”

The remaining averments of the respondent are almost similar as discussed in the facts of appeal M/S Keshav Stone Crusher Vs. HSPCB.

Learned counsel for the appellants and respondents have addressed arguments in the main appeal M/s Keshav Stone Crusher and have submitted that these submissions may also be considered for the other connected appeals.

Learned counsel for the appellants has argued that the appellants units were established long before the issuance of the notification dated 11.05.2016 under which the appellants were directed to shift the operation of stone crusher at some other place. The notification was challenged before the Hon'ble Punjab & Haryana High Court. The operation of the stone crusher of appellants was earlier closed and under pressure they were asked to submit an affidavit/undertaking to allow consents to operate. In the show cause notice issued to the appellants for refusing consent to operate, they were asked to produce stay order from Hon'ble Punjab & Haryana High Court. In fact, the Hon'ble Punjab & Haryana High Court had allowed injunction order in the some writ petitions filed by other stone crusher and the board was bound to follow the same. Instead the respondent refused CTO to the appellants and did not wait for the order to be passed in the other writ petitions. The appellants (M/s Keshav Stone Crusher) had also filed a writ petition before the Hon'ble Punjab & Haryana High Court which was however, withdrawn to persue the other legal remedy. Show cause notice did not point out any



specific deficiency in the siting criteria and cannot be sustained in the eyes of law.

The learned counsel for the respondent has argued that the appellants have tried to conceal the facts and have not come with clean hands by disclosing clear facts. In case of M/s Keshav Stone Crusher, a closure order was passed against the appellants unit on 14.04.2012 and the appeal filed by the appellants was dismissed on 09.11.2012. Some of the stone crushers have gone to the Hon'ble NGT against the order of Appellate Authority dismissing their appeal but the same were also dismissed. The appellants took the benefit of notification dated 11.05.2016 by filing an affidavit that they will shift their unit within the period of three years or further time allowed by the Government of Haryana. On the request of the stone crushers the time for shifting the stone crusher was extended upto 10.05.2021. The appellants are duty bound to shift the operation of their stone crusher but did not do so and applied for granting of CTO for the period beyond 10.05.2021 which was rightly refused and the show cause notice for closure of the unit was also issued.

The point in controversy in these appeals is whether the appellants are entitled to grant of CTO after the expiry of period as allowed by the Government of Haryana as per the notification dated 11.05.2016.

Before proceeding further, it will be relevant to take a note that the operation of the appellants units was ordered to be closed much before the promulgation of notification dated 11.05.2016, as per which the Government of Haryana had taken the decision to maintain ecological balance, keeping in view natural development and also to maintain the quality of environment and to avoid health hazard for the residents of the area. Vide this notification, the siting parameters of the stone crusher and emission norms were changed. Item no.3 of the notification reads as follows:

"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 applies to Haryana State Pollution Control Board.”

As per the above concession, the crushing units were allowed three years time from the date of issuance of this notification which was extendable by one year subject to compliance of the certain terms as mentioned in the notification. It is admitted fact that the Government of Haryana had extended the period for shifting of the stone crushers even without compliance of the terms, as mentioned in the notification, up to 10.05.2021.

The appellants units were already lying closed before the issuance of the notification as per closure order given in the table below:

Sr. No.	Name of Unit	Date of Closure Order	Result of appeal	Remarks
1.	M/s Keshav Stone Crusher	HSPCB/223 dated 14.04.2012	Appeal no.155 of 2012 was dismissed on 09.11.2012	The stone crusher was sealed as per order dated 14.04.2012 on 16.04.2012 and was lying closed.
2.	M/s Yamuna Stone Crusher	HSPCB/2012/120 dated 14.04.2012	-	Unit was sealed on 16.04.2012 and was lying closed.
3.	M/s Anant Stone Crusher	HSPCB/2012/68 dated 14.04.2012	-	Unit was sealed on 16.04.2012 and was lying closed
4.	M/s Durga Stone Crusher	HSPCB/2011/5973-5976 dated 03.11.2011	-	The appellants unit was lying closed and sealed as per the closure order dated 03.11.2011
5.	M/s Garg Stone Crusher	HSPCB/2012/375 dated 14.02.2012	-	The unit was sealed as per closure order on 16.04.2012 and was lying closed
6.	M/s Shiv Shankar Stone Industries	HSPCB/2012/66 dated 14.04.2012	-	The unit was sealed on 15.04.2012 and was lying closed

From the above table it is clear that the units of all the appellants were laying closed much prior to the issuance of the notification dated 11.05.2016. The appellants availed benefit/concession as per the notification dated 11.05.2016 by submitting an undertaking to the respondent that they shall shift the unit to a site meeting the siting norms as laid down under the notification dated 11.05.2016 within a period of three years from the date of issuance of the notification. The appellants also undertook to procure suitable land within this period and notify the respondents in this regard. It was also undertaken by them that failure on their part to procure the land as per the notification will render the continuation of their operation impermissible. The undertaking given by the appellants have been placed on file by the respondent and the same is not disputed.

The respondent extended the benefit of notification dated 11.05.2016 to the appellants units which were already lying closed much prior to the date of issuance of this notification and the closure order passed against them had assumed finality. Here the question which arise for consideration is as to whether the appellants who have conceded the notification dated 11.05.2016 and have taken the benefit as per the said notification are entitled to challenge the order which has been passed as per the above notification?

The notification dated 11.05.2016 was challenged before the Hon'ble Punjab & Haryana High Court by some of the stone crushers. The appellants have withdrawn their writ petitions with permission to avail other legal remedies. In CWP No.14258 of 2016 and 27269 of 2018, the Hon'ble Divisional Bench of Punjab & Haryana High Court vide order dated 25.11.2019 dismissed the aforesaid writ petitions with observations as follows:

- "4. *The period of three years has expired on 10.05.2019. No material has been placed on record by the petitioners to suggest that they have procured the land at the alternative site and have applied to Haryana State Pollution Control Board. However, the State Government on its own has extended the date by another one year,*

without the petitioners' procuring the alternatives sites for shifting their stone crushing units to the new sites meeting the prescribed norms, and applying to Haryana State Pollution Control Board. In view of this, the interim order dated 08.02.2017 rendered in CWP-14258-2016 and the interim order dated 25.10.2018 passed in cwp-27269-2018 are vacated. It shall be open for the State Government to proceed with the matter in accordance with law.

5. *Both the petitions are dismissed.*
6. *However, it shall be open to the petitioners to shift to the available land, as mentioned in the affidavit of Mr. Shekhar Vidyarthi, Special Secretary to Government Haryana, Environment Department. It shall also be open to the petitioners to approach this Court in case they face difficulty in identification of the land.*
7. *All the pending Civil Miscellaneous applications stand disposed of."*

The units of appellants were lying closed. The appellants availed the benefit of notification dated 11.05.2016 to seek restoration of the operation of their units which amount to admission of the notification and they stood estopped from continuing the operation of their unit, which were already lying closed, after the expiry of the period allowed as per said notification. Vide show cause notices issued to the appellants they were asked to submit the copy of the stay order obtained from the Hon'ble Punjab & Haryana High Court. It was quite evident that the appellants had been allowed CTO for the period as per the notification dated 11.05.2016. Some of the stone crushers have gone to the Hon'ble Punjab & Haryana High Court challenging the notification dated 11.05.2016 and obtained an injunction order. The respondent before taking any decision on the application of the appellants seeking consent to operate beyond 10.05.2021, wanted to enquire if the appellants have any stay order in their favour. Admittedly they did not had any stay order or produced the same before the respondent and the consent to operate was refused.

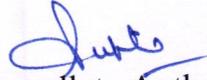
From the above facts it is clear that appellants after the closure of their units in the year 2011, 2012 have taken the benefit/concession of notification dated 11.05.2016

to continue the operation of their stone crushers. They did not comply with the terms of the notification and their undertaking. The period allowed for shifting their unit had expired. Allowing of CTO for period beyond the concession allowed as per the notification dated 11.05.2016 is not permissible. The option was available with the appellants to take the benefit of terms of notification dated 11.05.2016 within prescribed time for shifting their crushers which appellants have not availed, rendering status of appellant stone crushers to be restored to period prior to 11.05.2016, when these were lying closed under orders passed by respondent, which had assumed finality

From the above facts, it is clear that appellants were not entitled to be allowed the CTO for the period beyond 10.05.2021 and the respondent has rightly refused their application seeking consent to operate beyond that period.

In view of the above discussion, I find no merit in these appeals and same are ordered to be dismissed with cost of Rs.10,000/- (rupees ten thousand only) per appellant, which shall be paid to respondent no.1 (HSPCB).

Dated 08.12.2022


Appellate Authority