04/2022 **M/s Ganpati Plywood Industries** **Vs.** **HSPCB**

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

Arguments heard.

List on 01.12.2022 for orders.

Dated 24.11.2022

Appellate Authority

04/2022 **M/s Ganpati Plywood Industries** **Vs.** **HSPCB**

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

Orders not ready for want of proper secretarial assistance.

List on 08.12.2022 for orders.

Dated 01.12.2022

Appellate Authority

04/2022 **M/s Ganpati Plywood Industries** **Vs.** **HSPCB**

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

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

Appellate Authority

Dated 08.12.2022

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.04 of 2022
Date of Decision: 08.12.2022

M/s Shri Ganpati Plywood Industries, Village Khairati Khera, District Fatehabad, Bhiwani through its partner Subhash Sheoran

.....Appellant

Versus

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

.....Respondents

ORDER

This appeal is against the order dated 03.01.2022 whereby the operation of the plywood manufacturing unit of appellant was ordered to be closed as the SPM level in sample of air emission was found exceeding the prescribed limit.

The appellant have alleged that it earlier applied for consent to operate which was allowed from 19.04.2019 to 31.03.2024. It is a plywood manufacturing unit using fuel such as wood or coal. On 18.03.2021, the officials of respondent visited appellant unit and collected sample. On the basis of analysis report, the appellant was issued show cause notice stating that the SPM level in the air emission sample taken from the premises of appellant was 205.5 against the permissible limit of 150 mg/m^3. No show cause notice was served upon the appellant unit and its partners came to know from the official of respondent that the unit has been issued show cause notice

on 05.08.2021 which was sent on the email ID sgply2018@gmail.com which was created and used by consultant/advocate of appellant at the time of submitting online application for CTE and CTO. This email ID was not in knowledge of appellant and official email ID of appellant is shriganpatiplywood2019@gmail.com.

On coming to know about the show cause notice, the appellant submitted reply dated 23.12.2021 (Annexure-A4) with request to carryout the re-sampling from the unit. The appellant was not violating any provision of Air (Prevention & Control of Pollution) Act, 1981 and has followed environmental laws and directions issued by the respondent board. As per the policies of respondent, the appellant is entitled to apply for re-sampling after upgrading and rectifying the fault in the pollution control devices. Instead of providing the opportunity to appellant for re-sampling, the impugned order dated 03.01.2022 was passed directing the closure of the appellant unit.

In reply the respondent has alleged that on inspection dated 18.03.2021, the appellant unit was found operational and the sample of air emission was collected. In the analysis report of sample, the parameters of air emission were not found within permissible limit and a show cause notice dated 05.08.2021 was issued which was not replied by the appellant within stipulated period. As per the board's policy the case of the appellant unit was recommended to the competent authority for issuance of closure order and the impugned order dated 03.01.2022 was passed under the relevant environmental act/rules. The show cause notice was sent at the email address provided by the appellant. The reply of show cause notice submitted by the appellant was inadequate as the appellant had not submitted air pollution control measure modification report alongwith required performance security as per board policy dated 10.12.2020. The appellant does not have the right of re-sampling as there are conditions which are to be followed before giving permission for re-sampling. The unit

was required to submit documentary proof and photographs that sample had exceeded prescribed limit due to operational deficiencies.

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

The factual position is not disputed in this case. Appellant was allowed CTO vide letter no.HSPCB/Consent/:313127019-FATCTO-6481512 dated 19.04.2019 which was valid from 19.04.2019 to 31.03.2024. The premises of the appellant were inspected on 18.03.2021 and samples of air emission were collected. In analysis report the SPM mg/m³ were found 205.5 against the permissible limit of 150 mg/m^3. This followed issuance of show cause notice dated 05.08.2021 and appellant was directed to submit the reply within 15 days of issuance of notice. This fact is also not disputed that the notice was sent at the email sgply2018@gmail.com supplied by the appellant to the respondent board. The appellant has taken the plea that this email was created by their consultant/advocate at the time of submitting online application and was not in their notice. This contention of learned counsel for appellant carries no merit as the respondent have issued the show cause notice on the email address supplied by its consultant/advocate. It is nowhere the plea of appellant that they have ever intimated the change of their email address to the respondent. Sending of email on the email ID provided by appellant is a valid mode of service of notice.

This is also not disputed that the appellant did not file the reply within 15 days as per the show cause notice. The Regional Officer, HSPCB, Hisar sent recommendation dated 07.09.2021 Annexure-R5 recommending the closure of the appellant unit on the ground that no reply had been filed to show cause notice. This is an admitted fact that the appellant submitted reply on 23.12.2021 i.e. before the passing of closure order wherein it requested for re-inspection and re-sampling. It was also mentioned that the analysis report of the air sample may be due to the air quality

on the particular day as sometimes it happens due to surge in the intake quantity of fuel by the boiler which only happens for a short period of few moments of sudden increase in load of the machine. It was alleged in the reply that the boiler is now working as per the prescribed parameters and this fact can be verified on re-inspection. The appellant also expressed their readiness to deposit required fee/security for re-inspection and re-collecting of sample.

Learned counsel for respondent while relying on the guideline issued by the respondent board on 10.12.2020 has argued that as per these guidelines the plea of appellant for re-inspection and re-sampling cannot be accepted. He has referred on guideline I(i) of this order which reads 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.*

Learned counsel for appellant has also relied on these guidelines and has argued that it is nowhere the case of the respondent that the appellant was found bye

passing the effluent/air emission from air pollution control device or any of the direction contained in clause 1(i) of above office order dated 10.12.2020. The SPM level in the air sample taken by the officials of the respondent was found 205.5 against the permissible limit of 150 mg/m³. Such a marginal difference can be due to momentary discrepancies in the functioning of air control device and the appellant had every right to request for re-sampling and re-inspection. The plea of the respondent that appellant had not supplied any document or photographs is without basis as no such document or photographs were called by the respondent. The appellant was never asked to deposit any fee/expenses for re-inspection and re-sampling. The appellant had expressed his willingness to deposit the same and it was for the respondent to ask for deposit of a particular amount in particular head.

On consideration of the respective submission of the learned counsel for the parties and perusing the case of the parties I find following points for determination in this appeal:-

1. Whether the appellant is entitled to seek re-sampling as per guideline issued by respondent vide office order dated 10.12.2020?
2. Whether the closure order passed in this case is a speaking and reasoned order?

This fact is not disputed that in the sample taken by the inspection team of respondent on 18.03.2021, SPM limit was found beyond permissible limit. As per analysis report SPM level in sample was 205.5 mg/m^3 against the permissible limit of 150 mg/m^3. Here a question which arises for consideration as to whether the appellant had no right to seek re-inspection and re-sampling as per the direction/guidelines of the respondent.

Both the learned counsels have relied upon the guidelines issued vide office order dated 10.12.2020. As per this office order the respondent issued guidelines

concerning the action to be taken against a unit for violation of norms of discharge of water/air emission. The relevant portion of the same is 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 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 proforma 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 then officers 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 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.*

As per show cause notice the sample of air emission collected from the premises of appellant was found exceeding the prescribed SPM limit. The case of the appellant squarely falls in the guidelines 1(ii) of office order dated 10.12.2020. It is admitted fact that the appellant did not submit the reply within a period prescribed in the show cause notice. However, the reply was filed before passing of the impugned order and strangely the order nowhere discussed the reply filed by the appellant rather it has been passed on the presumption that the appellant had not submitted any reply to the show cause notice. In para 2(d) of the reply, it has been alleged that the reply submitted by the appellant was not adequate as the unit had not submitted APCM modification report alongwith required sampling fee and performance security as per board policy dated 10.12.2020. The above plea of the respondent clearly shows that the reply of the appellant was received on 23.12.2021 i.e. more than 10 days before passing of the impugned order. The authority which passed order dated 03.01.2022

was duty bound to take a note of the reply and pass necessary orders, in this regard. It could think it appropriate to consider the reply or not to consider the reply as it was filed after a period prescribed in the closure notice for submission of the reply. No reason has been given in the closure order dated 03.01.2022 for not considering the reply, however, in the reply filed by the respondent, in this appeal an attempt has been made to term the reply to show cause notice filed by appellant as inadequate because the appellant had not submitted APCM modification report, did not deposit sample fee and performance security.

The first thing before the respondent was either to consider the reply of the appellant to show cause notice or to reject the same. In case any document, fee or other formalities were required to be complied for consideration of this reply the appellant could be intimated in this regard. It has been found in many cases that the plea is raised by the respondent board that a unit applying for CTO/CTE/re-sampling or for any other purpose have not deposited requisite fee or completed all required formalities. It is required before taking any action for such deficiencies that the respondent board intimate the concerned unit of such deficiencies and give it time to complete the same. If the said unit still commit default, the board may proceed to initiate punitive action as per the provisions of law. The plea taken in the para 2(d) of the reply refer to the insensitive approach of the respondent, as no intimation was addressed to the appellant qua the deficiencies as pointed out in this paragraph. The appellant was granted consent to operate vide letter dated 19.04.2019 (A-1) which was valid up to 31.03.2024. It is to be presumed that at the time of granting of CTO, the plant was inspected and found having adequate instrumentation for measurement and control of temperature and pressure alongwith safety interlock and adequate fire fighting system. In para 4 of reply to show cause notice, the appellant has alleged as follows:

"That as per the show cause notice the air samples were shown to be exceeding the same must have happened due to the air quality on the particular day of sample or sometime it happens due to sudden surge in the intake quantity of fuel by the boiler which usually happen only for a short period of few minutes on sudden increase in load of the machine. That our boiler is now working as per the prescribed parameters and this fact can be verified by re-inspection and recollection of samples. We are ready to submit the required fee/security for the same."

This reply has come before the authority which passed the order dated 03.01.2022. It was incumbent upon that authority to examine the plea raised by the appellant as per the guidelines of the respondent issued from time to time.

None of the deficiencies as pointed out in instruction 1(i) of office order dated 10.12.2020 were found during inspection on 18.03.2021.

As per guideline 1(ii) of office order dated 10.12.2020, 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 alognwith 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. The 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.

The request of the appellant for re-inspection and re-sampling, as already discussed, was not even considered while passing the impugned order. The appellant is entitled to seek re-sample as per guidelines issued by the respondent vide office order dated 10.12.2020. So far as the requirement of inspection or performance security/sample fee etc. is concerned the respondent will intimate the appellant in this regard and allow him required time to abide by the same.

On perusal of the closure order (A-6), I find that it is a non-speaking and unreasoned order. The authority passing this order has not applied its mind and simply relied on the recommendation of Regional Officer, Hisar. It has not even taken note of the fact that after recommendation RO, Hisar, reply was filed by the appellant. The law is well settled that a statutory authority while passing an order is required to ensure that order is speaking and well reasoned. It is also required that the plea taken by the parties before the authorities are duly discussed and opportunity of personal hearing, if circumstances of the case so require, have been allowed.

The respondent must take 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 to the unit concerned and opportunity is allowed to it for rectification of the inadequacy/deficiencies and put the entire mechanism in order within a given time. If the concerned unit fails to comply with the direction of the respondent within a time frame, the respondent is all competent to take action against such unit as required and permissible under law.

From the above discussion I am of the considered opinion that the submissions of learned counsel for the respondent that guidelines 1(i) of office order dated 10.12.2020 are applicable in this case and plea raised in para 2(d) of the reply

are without basis. Even the show cause notice does not state the violation/deficiencies as per above guidelines.

In view of the above discussion, the appeal is accepted. The impugned order is set aside being not sustainable in the eyes of law. The appellant before start of operation of its unit carry out the required maintenance to upgrade the APCD as per guidelines of the HSPCB/CPCB and send notice to respondents for inspection. The respondents will conduct the inspection of the unit within seven days of receipt of notice. If any deficiency, as per guidelines of the board are found, it will be brought to notice of the appellant in writing and allow time to comply with the same, before taking any further action. The appellant will be allowed to operate its unit on complying with directions of respondent and re-sampling may be conducted thereafter on any day as deemed comfortable by respondent. No order as to cost.

Dated 08.12.2022

Appellant Authority