

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14821 of 2016
Date of decision: 17.4.2017

M/s Bhagwati Stone Crusher

.... Petitioner

Versus

State of Haryana & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE DARSHAN SINGH.

Present: Mr. Amardeep Sheoran, Advocate for the petitioner.

Mr. S.S. Pannu, DAG, Haryana for the State – respondent No.1.

Mr. Lokesh Sinhal, Advocate for the respondents – Haryana State Pollution Control Board.

S.S. Saron, J.

The petitioner M/s Bhagwati Stone Crusher, village Mandlana, Narnaul, District Mohindergarh through its proprietor Smt. Kitab Devi through her General Attorney Sh. Pardeep Kumar has filed the present petition under Articles 226/227 of the Constitution of India seeking setting aside the closure order/show cause notice dated 15.7.2016 (Annexure P-10) whereby the petitioner has been informed that it is operating its unit at its own risk in violation of the provisions of Sections 21 and 22 of the Air (Prevention and Control of Pollution) Act, 1981 ('Air Act' – for short) and in violation of the provision of the Haryana Government Environment Department Notifications dated 18.12.1997 and 11.05.2016. Therefore, the petitioner has been asked to show cause within seven days from 15.7.2016 as to why closure action under Section 31-A of the Air Act may not be initiated against its operating unit being without valid consent to operate from

the Haryana State Pollution Control Board, Panchkula ('Board' – for short) (respondent No.2) under Sections 21 and 22 of the Air Act for the year 2015-16.

A further prayer has been made for constituting an appellate authority under Section 31 of the Air Act which has not been constituted till date.

The petitioner is running a stone crusher unit at village Mandlana, Narnaul District Mohindergarh since 2005. The unit was established after obtaining consent letter from the Board which was issued vide letter dated 2.11.2004 (Annexure P-1) in terms of notification dated 18.12.1997 (Annexure P-2). The petitioner unit has been regularly applying for consent as required under the Air Act which has been granted regularly by the Board upto 31.3.2016. The petitioner again applied for consent vide application dated 22.12.2015 which has been withheld by the Board and consequently, the show cause notice date 25.01.2016 (Annexure P-4) was issued to which reply dated 01.02.2016 (Annexure P-5) was given. Thereafter, a second show cause notice dated 31.03.2016 (Annexure P-6) was issued in which one of the deficiency was that the Unit was meeting the sitting norms with respect to distance from water supply tank (PHED) in village Mandlana of capacity 25.6 MLD i.e. 128150581 ltrs + 12810581 ltrs. The order dated 31.03.2016 (Annexure P-6) was final closure notice which was appealable.

The petitioner filed an appeal on 22.04.2016 before the Appellate Authority under Section 31 of the Air Act challenging the closure order dated 31.03.2016 (Annexure P-6). The petitioner received a letter dated 22.09.2016 (Annexure P-7) from the Board vide which it was informed by the Financial Commissioner-cum-Secretary, Department of Environment (respondent No.1) that an Appellate Authority under the Air Act had not been constituted. The

appeal filed by the petitioner was returned. The Board in the meantime instead of issuing consent to operate again issued a show cause notice dated 08.07.2016 (Annexure P-9), which was not received by the petitioner. However, a fresh show cause notice dated 15.07.2016 (Annexure P-10) was issued. The petitioner submitted its reply on 18.07.2016 (Annexure P-11). In terms of the show cause notice dated 15.07.2016 (Annexure P-10), the reasons for refusing the consent to operate under the Air Act have been mentioned and a show cause notice has been issued as to why closure action under Section 31-A of the Air Act be not initiated against the stone crushing unit of the petitioner for operating the Unit without valid consent to operate of the Board under Section 21/22 of the Air Act for the year 2015-16.

As already noticed one of the prayers of the petitioner is for constituting an Appellate Authority under Section 31 of the Air Act so as to enable it to file an appeal. The show cause notice dated 15.07.2016 (Annexure P-10) is to be assailed by way of an appeal.

It is, therefore, not in dispute that the petitioner has the remedy of assailing the show cause notice dated 15.07.2016 (Annexure P-10) before the Appellate Authority under the Air Act.

Learned State Counsel has placed on record three orders dated 14.4.2017 passed in terms of Section 28 (1) (2) of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31 (1) (2) of the Air Act as also sub Rule 19 of the Bio Medical (Waste Management & Handling), Rules, 1998 whereby Appellate Authorities have been constituted and Members have been appointed.

In view of the above, the petitioner may, if so advised, approach the Appellate Authority for redressal of its grievances in accordance with law.

The writ petition stands disposed of accordingly.

(S.S. Saron)
Judge

(Darshan Singh)
Judge

17.4.2017
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Note:

1. Whether the order is speaking/reasoned: Yes/No.
2. Whether the order is reportable : Yes/No.