

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.27176 of 2016
Date of decision: 17.4.2017

M/s Ultra Beverages Pvt. Ltd. & Ors.

.... Petitioners

Versus

Haryana State Pollution Control Board & Ors.

.... Respondents

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

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Manvender Chauhan, Advocate for the petitioners.

Mr. S.S. Pannu, DAG, Haryana for the State.

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

S.S. Saron, J.

The petitioners M/s Ultra Beverages Pvt. Ltd. and others have filed the present petition under Articles 226/227 of the Constitution of India seeking quashing of the impugned orders [(Annexure P-5 (1 to 5))] passed by the Haryana State Pollution Control Board, Panchkula ('Board' – for short) (respondent No.1) whereby the premises of the petitioners-Units' engaged in water packaging have been sealed without providing adequate time to them to comply with the requisite formalities in terms of the Board's instructions/notification dated 01.06.2016 (Annexure P-2). It is submitted that prior to the said instructions/ notification (Annexure P-2) the units of the petitioners were within the ambit of Consent Management of the Board.

A further prayer is made for directing the respondents to grant appropriate relaxation with regard to norms; besides, extend the time already granted to the petitioners Units for complying with the requisite formalities in order to take consent to establish as well as consent to operate from the Board and other departments.

The Units of the petitioners are situated in the State of Haryana. They are engaged in water packaging since 2005 onwards. They have been in the business and activity of water packaging which are spread over the

townships/villages of Ballabgarh, Faridabad and Gurgaon. It is submitted that in order to do the said activities, the petitioners Units' have taken appropriate licenses from various Departments. They have got themselves registered with the Central Ground Water Authority, New Delhi constituted under the Environment Protection Act, 1986. They have got their licenses with regard to package drinking water from the Bureau of Indian Standards. They have also got issued sales tax numbers and are regularly paying taxes to the Excise and Taxation Department. They also have licenses under the Food Safety and Standards Act, 2006. Therefore, they are fulfilling all the appropriate formalities and have been carrying out the above said commercial activities.

The petitioners Units' earlier to 01.06.2016 were governed by notification dated 15.04.2014 issued by the Board. The said notification laid down the procedure for obtaining consent to establish and consent to operate under the Water (Prevention and Control of Pollution) Act, 1974 ('Water Act' – for short) and under the Air (Prevention and Control of Pollution) Act, 1981 ('Air Act' – for short). In terms of the earlier notification, the Units of the petitioners were exempted from the Consent Management of the Board. They were not to take consent to establish and consent to operate from the Board and were only to provide pollution control devices depending upon their process and activity.

The Board thereafter, issued instructions/notification dated 01.06.2016 (Annexure P-2) whereby the Board informed all its Regional Officers in the State of Haryana about the said notification and directed them that as per the modified directions of the Central Pollution Control Board, Water Packing Units including the Units of the petitioners had come within the ambit and purview of the Consent Management Programme of the Board. Appropriate steps accordingly were directed to be taken so that the Units operate only after taking consent to establish and consent to operate from the Board. The Regional Officer of the Board i.e. respondents No.2 to 4 acted accordingly and issued show cause notice to the Units of the petitioners under Section 33-A of the Water Act and Section 31-A of the Air Act. In the said show cause notices, it was stated that as per Sections 25 and 26 of the Water Act and Sections 21 and 22 of the Air Act prior consent of the Board is to be taken in order to establish

and operate an industrial unit. The Units of the petitioners were called upon to do the same within fifteen days of the notices. Copy of one of notices (Annexure P-3) has been attached.

The units of the petitioners were unaware of the notification dated 01.06.2016 and were shocked to receive the show cause notices as they were functioning in consonance with the Rules and Regulations for running their Units. It is only on receipt of the show cause notices that they realized that consent to operate and consent to establish is to be taken from the Board in order to carry out the water packaging in the Units. Besides, most of the premises were being run in the villages for which no prior Change of Land Use (CLU)/No Objection Certificate (NOC) had been taken from the District Town Planner. With the sudden change in the Rules, the Units of the petitioners were left in the lurch with no place to go to. Accordingly, representations (Annexure P-4 colly.) were submitted to the respondents as well as other higher officials to intervene and extend the time granted to the Units of the petitioners so as to comply with the requirements of the notification dated 01.06.2016 in order to take consent to establish and consent to operate from the Board. The petitioners have formed an association namely The Faridabad Packaging Drinking Water Welfare Association.

It is submitted that without looking to the general problems being faced by the Units of the petitioners on account of the sudden change in the Rules/Regulations vide notification dated 01.06.2016 (Annexure P-2), the Board committed perversity by directing and ordering the closure of premises of the Units of the petitioners by sealing the plants and machinery; besides, disconnecting the electricity power with immediate effect in pursuance of the impugned orders [Annexure P5 (1 to 5)]. Respondents No.2 to 4, it is alleged, acted in a haste manner. The action of sealing the units, it is submitted, is uncalled for in a socio-economic welfare State.

Notice of motion was issued on 23.12.2016 for 30.01.2017. Meanwhile, operation of the impugned orders (Annexure P-5 colly.) it was ordered shall remain stayed till the adjourned date. Besides, effective steps were to be taken to comply with the requirements for granting consent to

operate. The case was then taken up on 30.1.2017, 27.2.2017 and 15.3.2017. On the said dates, it was informed that steps were being taken to constitute an Appellate Authority under the Air Act and the Water Act. This was for the reason that the petitioners were to in the first instance approach the Appellate Authority for seeking redressal of their grievances.

Today, when the case was taken up, learned Counsel appearing for the State has placed on record three orders dated 14.4.2017 passed in terms of Section 28 (1) (2) of the Water Act 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 petitioners may, if so advised, approach the Appellate Authority for redressal of their grievances in accordance with law.

The writ petition stands disposed of accordingly.

Besides, the stay that was granted by this Court on 23.12.2016 shall remain in operation and shall continue for a period of two weeks from the date of issue of the certified copy of the order so as to enable the petitioners to approach the Appellate Authority.

(S.S. Saron)
Judge

(Darshan Singh)
Judge

17.4.2017
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Note:

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