

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2023:PHHC:123195

CRM-M-40017-2017
DECIDED ON: 16th MAY, 2023

- [1]

CRM-M-40017-2017

M/S Rajinder Singh & Brothers and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee

..... Respondent(s)
- [2]

CRM-M-48225-2017

M/S Gautam Wood Store and Saw Mills and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee

..... Respondent(s)
- [3]

CRM-M-45189-2021

Surinder Bhatia and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee

..... Respondent(s)
- [4]

CRM-M-16383-2022

Mohit Aggarwal and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee

....Respondent(s)
- [5]

CRM-M-60977-2022

M/S Golden India Company (P) Ltd. and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee

....Respondent(s)

[6]	<u>CRM-M-21822-2023</u>
M/S Furniture Comfort and Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	 Respondent(s)
[7]	<u>CRM-M-28757-2018</u>
Abhay Singh Jagat and another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	 Respondent(s)
[8]	<u>CRM-M-26248-2019</u>
M/S Pioneer Hopitality & Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	 Respondent(s)
[9]	<u>CRM-M-30744-2017</u>
Venod Kumar Sharma and Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	 Respondent(s)
[10]	<u>CRM-M-20121-2019</u>
M/S Shree Balaji Polypacks and Others	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	 Respondent(s)

[11]

CRM-M-22947-2019(O&M)

Tarsem Lal

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee, Chandigarh

.... Respondent(s)

[12]

CRM-M-25484-2019

M/S Hotel Dove and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee, Chandigarh

....Respondent(s)

[13]

CRM-M-28801-2019

Bhai Bhai Foods and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee, Chandigarh

....Respondent(s)

[14]

CRM-M-3956-2019

M/S Santokh Nursing Home and another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee, Chandigarh

....Respondent(s)

[15]

CRM-M-39616-2018

M/S Puja Enterprises and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee, Chandigarh

....Respondent(s)

[16]

Satpal

Versus

Chandigarh Pollution Control Committee, Chandigarh

CRM-M-43311-2018

....Petitioner(s)

....Respondent(s)

[17]

KirpaL Singh and Another

Versus

Chandigarh Pollution Control Committee

CRM-M-43507-2018

....Petitioner(s)

.... Respondent(s)

[18]

Rajesh Gulati Prop M/S Gulati Wood Works

Versus

Chandigarh Pollution Control Committee

CRM-M-45816-2018

....Petitioner(s)

....Respondent(s)

[19]

Umesh Chand Sood and Others

Versus

Chandigarh Pollution Control Committee

CRM-M-45820-2018

....Petitioner(s)

....Respondent(s)

[20]

Labh Kaur Prop M/S Universal Saw Mill

Versus

Chandigarh Pollution Control Committee

CRM-M-45842-2018

....Petitioner(s)

....Respondent(s)

CRM-M-40017-2017 & other connected petitions		-5-
[21]		CRM-M-46846-2018
M/S Terroni Foods and Others		Petitioner(s)
Versus		
Chandigarh Pollution Control Committee		Respondent(s)
[22]		<u>CRM-M-47148-2019</u>
M/S M.M. Steel Industries and Another		Petitioner(s)
Versus		
Chandigarh Pollution Control Committee		Respondent(s)
[23]		<u>CRM-M-49960-2018</u>
Bharat Bhushan Nikhanj		Petitioner(s)
Versus		
Chandigarh Pollution Control Committee		Respondent(s)
[24]		<u>CRM-M-50088-2018</u>
Vikramjit Aggarwal and Another		Petitioner(s)
Versus		
Chandigarh Pollution Control Committee		Respondent(s)
[25]		<u>CRM-M-50098-2018</u>
Neeraj Sethi		Petitioner(s)
Versus		
Chandigarh Pollution Control Committee		Respondent(s)
[26]		<u>CRM-M-50136-2018</u>
Deepak Mehal and Another		Petitioner(s)
Versus		
Chandigarh Pollution Control Committee		Respondent(s)

CRM-M-40017-2017 & other connected petitions		-6-
[27]		<u>CRM-M-50178-2018</u>
Swaran Singh and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)
[28]		<u>CRM-M-50297-2018</u>
Rajnish Sharma and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		 Respondent(s)
[29]		<u>CRM-M-51033-2018</u>
Satwant Kaur and Others		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)
[30]		<u>CRM-M-51054-2018</u>
Manju Nikhanj and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)
[31]		<u>CRM-M-51093-2018</u>
Sandeep Khosla and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)
[32]		<u>CRM-M-5187-2019</u>
M/S Joshi Autowheels Pvt. Ltd. and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)

[33]	<u>CRM-M-6745-2019</u>
M/S Freaking Amazing Foods Pvt. Ltd. and Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	Respondent(s)
[34]	<u>CRM-M-7145-2018</u>
M/S Rock and Storm Hospitality and others	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	Respondent(s)
[35]	<u>CRM-M-49761-2019</u>
M/S Matharoo Saw Mills. and Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	Respondent(s)
[36]	<u>CRM-M-78941-2018</u>
M/S Anup Wood Works	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	Respondent(s)
[37]	<u>CRM-M-7686-2020</u>
Noor Sidhu and Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	Respondent(s)
[38]	<u>CRM-M-7126-2020</u>
B.R. Engineering Works and Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	Respondent(s)

[39]

CRM-M-10389-2020(O&M)

M/S Jai Luxmi Steel Industries and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee, Chandigarh

....Respondent(s)

[40]

CRM-M-35300-2022

M/S Bake Food Bakery and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee

....Respondent(s)

[41]

CRM-M-35334-2022

M/S Nanak Sweets and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee

....Respondent(s)

[42]

CRM-M-54340-2021

M/S Pathania Enterprises and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee

....Respondent(s)

[43]

CRM-M-47919-2017

Rajinder Vashisht

....Petitioner(s)

Versus

Chandigarh Pollution Control Committee

....Respondent(s)

[44]

CRM-M-49353-2017

M/S Sun Easterners and Another

....Petitioner(s)

Versus

Chandigarh Pollution Control

....Respondent(s)

CRM-M-40017-2017 & other connected petitions		-9-
[45]		<u>CRM-M-49400-2017</u>
M/S Prabhat Wires and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control		Respondent(s)
[46]		<u>CRM-M-25880-2022</u>
M/S New Kesri Sweets		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)
[47]		<u>CRM-M-45762-2022</u>
M/S Galaxy Industries and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)
[48]		<u>CRM-M-46202-2022</u>
M/S Grewal Enterprises and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee, Chandigarh		Respondent(s)
[49]		<u>CRM-M-58813-2022</u>
M/S Bansal Steel Furniture and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)
[50]		<u>CRM-M-58784-2022</u>
M/S Puri Timbers and Another		Petitioner(s)
	Versus	
State of U.T. Chandigarh and Others		Respondent(s)

CRM-M-40017-2017 & other connected petitions		-10-
[51]		<u>CRM-M-35715-2022</u>
M/S G.M.P. Motors and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee, Chandigarh		Respondent(s)
[52]		<u>CRM-M-39928-2018</u>
M/S Naresh Steel Furniture and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee, Chandigarh		Respondent(s)
[53]		<u>CRM-M-48644-2022</u>
M/S Fortune Industries and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee, U.T.Chandigarh		Respondent(s)
[54]		<u>CRM-M-7932-2023</u>
M/S Navkar Steel Industries and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)
[55]		<u>CRM-M-14918-2023</u>
Ravinder Kumar		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)
[56]		<u>CRM-M-19160-2018(O&M)</u>
M/S Burger King India Pvt. Ltd. and Another		Petitioner(s)
	Versus	
Chandigarh Pollution Control Committee		Respondent(s)

[57]	<u>CRM-M-51644-2022</u>
Avika Ram and Another	Petitioner(s)
Versus	
CPCC, Chandigarh and Another	Respondent(s)
[58]	<u>CRM-M-10138-2020</u>
M/S M.G. Industries and Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	Respondent(s)
[59]	<u>CRM-M-8873-2023</u>
M/S Jain Furniture Industries and Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	Respondent(s)
[60]	CRM-M-58827-2022
M/S Vishnu Industrial Corporation and Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	Respondent(s)
[61]	<u>CRM-M-10233-2023</u>
M/s. Chopra Fuel Depot and Saw Mills and Another	Petitioner(s)
Versus	
Chandigarh Pollution Control Committee	Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Anupam Gupta, Sr. Advocate with
Mr. Gautam Pathania, Advocate for the petitioner(s).

Mr. Akshay Bhan, Sr. Advocate with
Mr. Pawandeep Singh and
Mr. Akhilesh Brar, Advocate for the petitioner(s).

Mr. R.S. Cheema, Sr. Advocate with
Mr. Arshdeep Cheema, Advocate,

Mr. Satish Sharma, Advocate and
Mr. S.S. Kang, Advocate for the petitioner(s) in
CRM-30744-2017.

Mr. Sunil Chadha, Sr. Advocate with
Ms. Tara Dutt, Advocate and
Ms. Kashish Aggarwal, Advocate for the petitioner(s)
in CRM-M-46846-2018.

Mr. Gautam Pathania, Advocate for the petitioner(s)
in CRM-M-Nos.43507, 45816, 45820, 45842, 49960, 50088,
50098, 50136, 50178, 50297, 51033, 51054, 51093 of 2018,
45189-2021 and 16383-2022.

Mr. Aman Sharma, Advocate and
Mr. Chirag Suri, Advocate for the petitioner(s).

Mr. Jagjot Singh, Advocate for the petitioner(s)
in CRM-M-25880-2022, 35344-2022, 43311 & 43316-2018
& 35300-2022.

Mr. M.S. Dhami, Advocate for the petitioner(s)
in CRM-M-39616-2018.

Mr. Dinesh Nagar, Advocate for the petitioner(s)
in CRM-58784-2022.

Ms. Isha Goyal, Advocate for the petitioner(s).

Mr. Sushil Bhardwaj, Advocate for the petitioner(s).
Mr. Amit Thakur, Advocate and
Ms. Harveen Mehta, Advocate for the petitioner(s).

Mr. Raina S. Thakur, Advocate for the petitioner(s)
in CRM-M-19160-2018.

Mr. Animesh Sharma, Advocate for the petitioner(s)
in CRM-M-6745-2019.

Mr. Varun Garg, Advocate for the petitioner(s)
in CRM-M-25484-2019.

Mr. P.S. Ahluwalia, Advocate for the petitioner(s)
in CRM-M-7145-2018.

Mr. Jagnahar Singh, Advocate for the petitioner in
CRM-M-7932-2023.

Mr. Ashish Gupta, Advocate for the petitioner(s).

Ms. Mehak Sood, Advocate and
Mr. Rajesh Sood, Advocate for the petitioner(s)
in CRM-M-14918-2023.

Mr. Kunal Mulwani, Advocate for the petitioner(s)
in CRM-M-78941-2018.

Mr. D.K. Singal, Advocate for the petitioner in
CRM-M-10389-2020.

Mr. Vishal Garg Narwana, Advocate,
Mr. Sagar Sharma, Advocate,
Mr. Vasu Ranjan Shandilya, Advocate and
Mr. Arshdeep Mraad, Advocate for the petitioner(s).
in CRM-M-35715-2022.

Mr. Rohan Mittal, Advocate for the petitioner(s)
in CRM-M-39928-2018.

Mr. G.S. Punia, Sr. Advocate with
Mr. Harveen Kaur, Advocate.

Mr. HPS Rahi, Advocate for the petitioner
in CRM-M-28801-2019.

Ms. Kushaldeep Kaur, Advocate for
Mr. Ankur Mittal, Advocate for the petitioner(s).

Mr. Rahul Pathania, Advocate for the petitioner(s)
in CRM-M-54340-2021.

Mr. Gaurav Datta, Advocate for the respondent-Committee
in CRM-M-51644-2022, CRM-M-7932, 8873, 14918
and 58827 of 2023.

Mr. J.S. Bagga, Advocate for petitioner(s)
in CRM-M-60977-2022 and CRM-M-21822-2023.

Mr. Yogeshwar Dayal Kaushik, Advocate for the petitioner(s).

Mr. Manoj Pundhir, Advocate for respondent No.2.

SANDEEP MOUDGIL, J (ORAL)

1. Vide this common order, this Court intends to dispose of bunch of above 61 petitions, which involves similar set of facts and identical common question of law.

2. The jurisdiction of this Court under Section 482 Cr.P.C. has been invoked for quashing of complainant filed by Chandigarh Pollution Control Board as well as summoning order(s) passed by Judicial Magistrate Ist Class,

Chandigarh whereby the accused have been summoned for commission of offence, under Sections 25/26 read with Sections 44 and 49 of the Water (Prevention & Control of Pollution) Act, 1974 and Sections 37, 39 and 40 of the Air (Prevention and Control of Pollution) Act, 1981, alleging specific violation of the afore-said Acts.

3. To avoid any repetition the facts are being taken from the petition bearing CRM-M-40017-2017, titled **“Rajinder Singh & Bros and another vs. Chandigarh Pollution Control Committee”**.

4. The brief facts giving rise to the present petition are that the petitioner is a proprietorship firm which is involved in manufacturing and sale of wood and plywood boxes. It is registered under Factories Act, 1948. The manufacturing unit/factory of the petitioners' is stated to be located just outside the *abadi-deh* area of Village Raipur Khurd, UT Chandigarh opposite to Airport Chowk, UT Chandigarh. The unit has a license from the Chief Inspector of Factories which is valid upto 31.12.2015 being renewed from time to time with latest renewal as per application dated 10.01.2017 and for the said purpose challan form along-with renewal fees was deposited on 09.01.2017 (Annexures P-1 to P3).

5. The petitioner-firm has also sale tax of UT Chandigarh with certificate of registration dated 25.04.2005 (Annexure P-4), which includes for sale of other building material also but at present the petitioner's firm is confined only in manufacturing of wooden boxes and for the said purpose had installed saw mills to get wooden logs in the small pieces. The Electricity Department, UT Chandigarh has sanctioned and installed a commercial electricity connection and in support thereof, electricity bill dated 27.06.2017 has been placed before this Court (Annexure P-5). Since the area of the

factory falls within the jurisdiction of Gram Panchayat, Raipur Khurd, No Objection Certificate (NOC) dated 03.11.2016 has also been granted by the said Gram Panchayat. A consent was also granted to the petitioner-firm while taking into consideration Section 25 and 26 of Act of 1974 and Section 21 of Act of 1981, which was valid upto 30.09.2020. A perusal of the said consent letter dated 06.12.2016 indicates that it was subject to certain conditions.

6. The Chandigarh Pollution Control Committee (CPCC) through its Secretary issued a letter dated 17.02.2017 (Annexure P-9) asking the petitioners and other firm vide different dates of such letters called upon to submit NOC's as per new categorization of industries adopted by CPCC and in response thereto, a request was made by the petitioners'-firm to Block Development and Panchayat Officer (BDPO), Sector 19-B, Chandigarh referring the communication dated 17.02.2017 (Annexure P-9) that NOC is required from your office, to which the BDPO has responded with the remarks 'We have not been issued any instruction from higher authority for issuance of the same' (Annexure P-11).

7. Resultantly, a show cause notice dated 22.06.2017 (Annexure P-12) was issued for revocation of the consent granted by the CPCC informing that the Municipal Corporation, UT Chandigarh vide its letter dated 10.04.2017 has formed a new building bye-laws for villages falling in UT Chandigarh. There is no provision for establishing industry within the *abadi-deh* of villages and therefore issuance of NOC to the petitioners' firm does not arise. A show cause notice in clear terms and granted 15 days time to provide NOC failing which the consent earlier granted dated 06.12.2016 (Annexure P-8) would be withdrawn. The said show cause notice was replied by the petitioners' firm on 15.07.2017 (Annexure P-3) taking a stand that the unit of

the petitioners' firm does not fall within the *abadi-deh* of the Village and also not being a polluting unit be allowed to run as it is since the Gram Panchayat has already issued a NOC and consent by the CPCC was duly granted on 06.12.2016 (Annexure P-8) be not withdrawn.

8. At the same time, a complaint has also been preferred without considering the reply submitted by the petitioners' firm to the show cause notice in the form of a criminal complaint in the Court of Judicial Magistrate Ist Class, Chandigarh on 21.03.2017 wherein, summons have been issued and pursuant thereto, petitioners had appeared for pre-charge evidence.

9. It is against the said criminal complaint dated 21.03.2017 (Annexure P-14) and summoning order dated 21.07.2017 (Annexure P-15) instant petitions came to be filed before this Court invoking the jurisdiction under Section 482 Cr.P.C., to quash the same.

10. It is the contention of learned counsel for the petitioners that the Unit did not violate any of the legal provisions for running its unit which has all the requisite permissions from various charges including the NOC given by the Gram Panchayat in whose jurisdiction the manufacturing unit has been established. It is also argued with the help of Articles 19 and 21 of the Constitution of India to submit that to carry on its own business activity and to earn the livelihood, are the fundamental rights as has been enshrined by the Constitution, particularly when the petitioners' unit is neither a non-polluting unit nor is in violation of any of statutory provisions of the Act of 1974 and Act of 1981.

11. Learned Senior counsel has also urged that it has got commercial electricity connection from the competent authority as well as the registration under the sales tax vide certificate of registration dated 25.04.2005 (Annexure

P-5 and P-4 respectively).

12. Mr. Akshay Bhan, learned Senior Counsel has added to the submissions referring to the date of complaint in question i.e. 21.03.2017 whereas show cause notice was issued on 22.06.2017 i.e. much later to the filing of the criminal complaint and the reply submitted thereof, has not been considered so far by the respondent-CPCC. Deriving strength from the said fact Mr. Bhan, has stressed to the fact that the whole action of the respondent-CPCC is vitiated and smacks arbitrariness and irrational approach, which is also unfair. On the other hand the petitioners have been called upon to reply to the show cause notice within 15 days thereof, which has compelled them to approach this Court invoking the jurisdiction under Section 482 Cr.P.C. The arguments have been folded lastly on the aspect contending that the consent granted vide letter dated 06.12.2016 was a consent to establish as *ex-post facto* and at serial No.2 of the said order itself a consent to operate has been granted in the light of which now issuance of show cause notice in question is totally illegal, arbitrary, unfair and violative of Articles 14, 19 and 21 of the Constitution of India.

13. After notice of motion, the respondent-CPCC has filed written statement and controverted the stand taken by the petitioners alleging it to be misleading and distortion of fact to their advantage. Mr. Gaurav Dutta, Advocate has referred to the show cause notice(s) on the ground that as per the new building bye-laws, Municipal Corporation, UT Chandigarh informing the respondent-CPCC that there is no provision of installation of industry within the *abadi-deh* of villages so the grant of NOC of the industry does not arise and since NOC is not being issued by the Municipal Corporation, the petitioners' firm cannot be allowed run their business and to do industrial

activities.

14. Mr. Gaurav Dutta, learned counsel for the respondent-CPCC in addition to arguments of Mr. Toor, submits that on account of new categorization of industry adopted by respondent-CPCC, no industry is to be allowed in non confirming area.

15. No other arguments have been raised by any of the parties.

16. Having heard learned counsel for the parties and on perusal of the record with the able assistance of learned Advocates for the respective parties.

17. The admitted facts on record could be culminated to say that a show cause notice dated 22.06.2017 (Annexure P-12) was issued to the petitioners by respondent-CPCC primarily for not obtaining pre-post consent purposing the following directions:-

(i) that accused will close the unit forthwith;

(ii) that accused will not run unit before the permission granted by the CPCC;

(iii) that concerned authorities shall disconnect water/electricity supply to accused unit and to seal the said unit.

18. The petitioners had been provided 15 days time to reply to the said show cause notice, failing which the afore-said action was purposed to be initiated.

19. The petitioners have assailed the criminal complaint dated 21.03.2017 (Annexure P-14) along-with summoning order dated 19.08.2017 (Annexure P-15) stating that it has a license duly issued from the Chief Inspector of Factories firstly being valid upto 31.12.2015 and thereafter been renewed from time to time and has placed on record the challan form and receipts of renewal fees as Annexures P-1 to P-3 to the instant petition.

Reference has also been made to the effect that sales tax number has also been

obtained from the UT Administration Chandigarh in the form of certificate of registration dated 25.04.2005, apart from having duly sanctioned and legally authorised a commercial electricity connection granted by the Electricity Department, UT Chandigarh.

20. As far as the contention of the respondent-CPCC qua the new categorization of industry as adopted by respondent-CPCC the Municipal Corporation, Chandigarh, no industry is to be allowed in non confirming area is concerned, there is no contravention to the fact brought on record by the petitioners that the area of the factory falls within the jurisdiction of Gram Panchayat, Raipur Khurd. In addition to the same, the petitioners are also possessing a No Objection Certificate (NOC) dated 03.11.2016, which was granted by the said Gram Panchayat. The consent granted to the petitioner-firm is only after taking into consideration Section 25 and 26 of Act of 1974 and Section 21 of Act of 1981, which was valid upto 30.09.2020 i.e., upto much later date on which the show cause notice was issued dated 22.06.2017 (Annexure P-12).

21. This Court shall also borne into mind the terms and conditions as incorporated in the consent letter dated 06.12.2016 (Annexure P-8), which needs to be mentioned here itself:-

- “1. The Consent to establish (ex-post facto) is granted.***
- 2. The Consent to operate is valid upto 30.09.2020.***
- 3. The Consent is valid for Cutting of Wood (Saw Mill) with gross capital investment (including Land, Building, Plant and Machinery) of Rs. 5.68 Lacs only.*
- 4. The Consent to operate has been approved by CPCC from pollution angle and the industry shall obtain all other formal consents from other concerned departments (if needed).*
- 5. The unit shall obtain prior permission from CPCC before*

expansion/ modification/upgradation of the process /plant/ machinery.

6. *The authorized person of the unit shall intimate the CPCC before closing of the unit.*

7. *Conditions under the Water Act: Water shall be used only for domestic purpose.*

(i) Following standards must be achieved before disposal of waste water into the public sewerage system,

<u>Parameters</u>	<u>Permissible Limits</u>
<i>pH</i>	<i>Between 5.5 and 9.0</i>
<i>Suspended Solids</i>	<i>600 mg/l</i>
<i>BOD</i>	<i>350 mg/l</i>
<i>Oil & Grease</i>	<i>20 mg/l</i>
<i>Ammonical Nitrogen (as N)</i>	<i>50 mg/l</i>

The effluent should meet the general standards as laid down in the Environmental Protection Rules, 1986, before disposal into the sewerage system.

(ii) All the underground water retaining structures shall be lined with an impervious layer so as to avoid seepage and contamination of sub-soil/water.

(iii) The unit shall comply with the provisions of the Water (Prevention and Control of Pollution) Cess Act, 1977, as amended (hereinafter as Cess Act) and Rules made thereunder.

(iv) The unit shall regularly submit to the Committee returns of water consumption in the prescribed form and pay the cess as specified under Section 3 of the Cess Act.

8. Conditions under the Air Act:

(i) Unit should maintain the ambient air quality by controlling fugitive emissions (if any) during the process.

(ii) Unit shall not install/use D.G. set without acoustic enclosure and without the prior permission of Chandigarh Pollution Control Committee.

9. *The unit shall not handle/generate any Hazardous Waste*

in the unit

10. Unit shall a Paint activities like Electroplating/Wire Drawing/Casting Powder Coating and Paint activity without prior permission from Chandigarh Pollution Control committee.

11. The applicant shall take adequate measures for control of noise from its own sources so as to comply with the standards.

12. No complaint should be received. from,nearby. neighbours regarding pollution aspects against the unit.

13. The unit shall regularly submit the environmental statement in the prescribed form-V for the previous financial year not later than 30th of September every year to CPCC

14. Unit shall apply for renewal of consent in the prescribed form at least 90 days before the date of expiry of this consent order.

GENERAL CONDITIONS FOR CONSENT TO DISCHARGE - EFFLUENT EMISSIONS/ HAZARDOUS WASTE

a) Any upset conditions in operations/process in the premises, which may cause increased effluent or result in violation of standards prescribed in the Consent Order be reported to the Chandigarh Pollution Control Committee at the first instance.

b) The applicant shall practice good housekeeping. All pipes/valves/drains/ conduits/sewers shall be kept leak proof. Floor washings from operation/ process area shall not be allowed to find their way in storm-water drains or open areas. The unit shall not throw any solid waste in open inside/outside its premises to the nuisance of the public or to be deterrent to the environment in any manner.

c) The applicant shall go in for recycling/reuse of water as far as practicable to minimize the discharge of wastes into the environment and shall work to adopt clean technology to

reduce the generation of environmental pollutants.

d) The unit shall take necessary steps to ensure that noise pollution is not caused from its operations to the nuisance of the public or workers. The unit shall not burn any material on the road side and or inside/outside its premises to the nuisance of the public or to be deterrent to the environment in any manner.

e) This consent stands cancelled if there will be any encroachment of Government land.

*f) The unit i.e. **Ms. Rajinder Singh and Brothers, Raipur Khurd, Chandigarh** shall comply with the provisions of the Environment (Protection) Act, 1986 and the rules made thereunder.”*

22. The scrutiny of the aforesaid terms and conditions having made would technically require the primarily reading of terms No.1, 2 7 & 8 as well as the general conditions from a to f in particular. Though, this Court does not mean to ignore any of the other terms and conditions stipulated in the said consent letter.

23. The term No.1 from the said letter is a consent to establish (ex-post facto), whereas term No.2 further has granted in clear terms the consent to operate being valid upto 30.09.2020 i.e., much later to the date of show cause notice dated 22.06.2017 (Annexure P-12), meaning thereby at the time of issuance of this consent letter, the consent to establish as well as to operate was granted by the competent authority i.e., the Chandigarh Pollution Control Committee, which had actually issued the show cause notice in question and in furtherance to same the complaint was filed, wherein the petitioners have been summoned.

24. Testing within the meaning of terms and conditions of the said consent letter even further to terms No.7 & 8, which are conditions to be

followed under the Water Act as well as Air Act respectively. The show cause notice and the complaint do not refer to violation of any of these terms or any other term from the consent letter including the general conditions from a to f. The petitioners are already having no objection certificates from other competent authorities such as Environment Department, Forest Department and under the Factories Act as well as from the Gram Panchayat concerned to establish and operate the industry at the present site.

25. This Court also could not find justifiable reason to file a complaint dated -21.03.2017 (Annexure P-14), wherein summoning has been consequently passed, for the reason that little earlier to the issuance of show cause notice dated 22.06.2017 (Annexure P-12), the respondent-CPCC itself has issued the consent letter on 06.12.2016 (Annexure P-8) after having considered all aspects with certain terms and conditions to establish and operate the unit. Even during the course of arguments, except strenuously arguing on two points i.e firstly to say that it has no consent to operate and secondly according to the communication received from Municipal Corporation, Chandigarh, the unit cannot be operate at the site being within the Abadi Deh (Lal Dora). In fact, against a specific stand of the petitioners, as is evident from the documents i.e., consent letter dated 06.12.2016 (Annexure P-8) and the No Objection Certificate dated 03.11.2016 (Annexure P-7), there is no contrary material brought on record by the respondents to support the justification legality and veracity to the issuance of show cause notice dated 22.06.2017 (Annexure P-12) and filing of complaint dated 21.03.2017..

26. The judgement relied upon by the respondent rendered by the Apex Court in *Alebic Pharmeaucitcals Ltd. vs. Rohit Prajapati bearing Civil*

Appeal no. 1526 of 2016 decided on 01.04.2020 to say that ex-post facto

approval cannot be considered to be valid and legal since it cannot be undertaken to have cured the failure to obtain ECs before projects commenced operation and such measures cannot act as correctives for historical wrongs which would in no sense can compensate for damage already caused to environment as a result of manufacturing activities carried out without ECs. In the instant case, issue is not of having ECs or violating any other terms and condition of the consent letter, but only on account of a communication dated 10.04.2017 made by the Municipal Corporation, Chandigarh to the CPCC stating that new building bye laws for villages falling in U.T., Chandigarh do not have any provision for installation of industry within Abadi Deh (Lal Dora) of villages. This Court is in full consonance to the fact on record that it was never a condition precedent to the issuance of a consent letter dated 06.12.2016 (Annexure P-8) and therefore, the industries which are in operation prior to any new building bye laws and the communication of Municipal Corporation, Chandigarh dated 10.04.2017 cannot be made to face a forced and compelling criminal litigation for no fault of theirs. The respondent-CPCC has failed to bring before this Court any such incriminating material to demonstrate that the petitioners Units are violating any of the terms and conditions of the consent letter so issued to them by the Competent Authority who have all other required permissions-NOCs from all relevant authorities, as stipulated in the consent letter.

27. The Supreme Court in the case of “*State of Haryana & Ors. Vs. Bhajan Lal & Ors. 1992 Supp (1) SCC 335*” the scope of inherent powers of the High Court under Section 482 Cr.P.C. to quash the FIR/complaint has been discussed in detail. At the same time, the Apex Court identified the following cases in which FIR/complaint can be quashed:

- “1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the 21 proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*
- 7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

28. Therefore, considering the aforesaid submissions and after testing the documentary material before the Court, which are the documents of the

respondent-CPCC itself and have not been disputed and also considering the judgment rendered in Bhajan Lal (supra), I am of the firm view that the issuance of show cause notice dated 22.06.2017 and subsequently preferring a complaint dated 21.03.2017 (Annexure P-14) are totally unwarranted arbitrary act, which suffers from malice and tantamount to blatant abuse of process of law.

29. Hence, the complaint dated 21.03.2017 (Annexure P-14) alongwith summoning order 21.07.2017 (Annexure P-15) passed by the Judicial Magistrate Ist Class, Chandigarh is, hereby, ordered to be quashed.

30. Accordingly, the petitions are allowed.

31. All the pending miscellaneous applications, if any shall be disposed of accordingly.

32. A photocopy of this order be placed on the file of connected cases.

(SANDEEP MOUDGIL)
JUDGE

16.05.2023
sham

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>