

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH AT NEW DELHI

ORIGINAL APPLICATION NO. 294 OF 2023

In the matter of:

Prasoon Pant & Anr.

...Applicants

Versus

Uttar Pradesh Pollution Control Board & Ors.

....Respondents

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THROUGH

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Place: New Delhi

Dated: 28.08.2023

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RESPONSE ON BEHALF OF THE APPLICANTS TO THE STATUS REPORT
FILED BY THE UPPCB REGIONAL OFFICE, GHAZIABAD DATED
05.07.2023

MOST RESPECTFULLY SHOWETH:

1. That the Hon'ble National Green Tribunal while hearing the Original Application No. 294/2023 in order dated 01.05.2023, directed Central Pollution Control Board (CPCB) and Uttar Pradesh Pollution Control Board (UPPCB) to file their responses on the complaint of the Applicants regarding the absence of NOCs or Consent to Establish by 21 respondent hospitality entities of Ghaziabad, including malls, banquets and hotels, numbering 7 to 27 in Original Application.
2. That the Uttar Pradesh Pollution Control Board (UPPCB) in its status report dated 05.07.2023 submitted to the Hon'ble Tribunal, by way of a table, under the head STATUS OF NOC/CONSENT has shown the hospitality entities who have taken/not taken consents.
3. That the aforementioned table of status report submitted by the UPPCB is erroneous in so much that it places both—the 'CTE/NOC' and the 'CTO/secondary consent' under the same head/not distinguishing between the two, whereas out of 20 entities (Aditya Mall omitted), the 8 entities viz. Hotel Golden Tulip; Hotel Silver Spoon; Hotel R.K. Residency; Hotel Mukut Residency; Hotel Banana Tree; M/s Hollywood Dreams; EDM Mall; and Signature Global Mall, that have obtained only a **Consent to Operate** (CTO) have been shown to be 'in compliance', whereas in effect these entities do not have a Consent to Establish u/s 25 (1) (a) of Water Act and u/s 21 (1) of Air Act.

4. That the Uttar Pradesh Pollution Control Board (UPPCB) in its status report had issued notices to only 12 out of 20 entities (while it has skipped one entity, namely Aditya Mall), while none of the 21 entities reported by the Applicants have the mandatory CTE under the Water and Air Acts— which is not being talked about in the status report and which is the primary reason the Applicants approached the Hon’ble Tribunal.
5. That the status report states that notices dated 22.06.2023 had been served on 12 hospitality entities directing them to apply for consents u/s 25/26 of Water Act and u/s 21 of the Air Act within a week, failing which the UPPCB shall take action against the entities including their closure, but no update so far has been intimated by the Board to the Hon’ble NGT.
6. That the UPPCB in its status report has not outlined as to under what provisions, hospitality entities that had skipped taking an NOC/CTE under the relevant Acts, shall now obtain it and also does not speak about penal provisions for past violations.
7. That the Applicants object to the status report for not indicting the 21 named hospitality entities for not taking the CTE under the relevant provisions of the Water & Air Acts and further not issuing notices for not complying with the CPCB guidelines in the wake of OA No 400/2017. The said guidelines had outlined several measures/consents etc for pollution mitigating measures at individual establishments and the area/cluster of restaurants/hotels/motels/banquets etc.
8. The UPPCB while submitting the status report has been completely unmindful of the fact that none of the 21 entities has the primary consent or the CTE, thereby specifically violating the provisions of Section 25 (1) (a) of Water (Prevention and Control of Pollution) Act, 1974 that states:-
Restrictions on new outlets and new discharges-
(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—
(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage)..

(Emphasis supplied)

Like under the aforesaid provisions of the Water Act the CTE is also obtained u/s 21 of the Air (Prevention & Control of Pollution) Act 1981 which states:-

Restrictions on use of certain industrial plants:

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area....

(Emphasis supplied)

9. That once the CTE is obtained under the aforesaid provisions of the Water Act and the Air Act, a project proponent may begin construction of the project and after completing it applies for a Consent to Operate or CTO under Section 25 (1) (b) & (c) of the Water Act and Section 21(1) of the Air Act.
10. That in the case of the 21 entities arraigned by the Applicants 8 entities have managed to obtain the consent or CTO u/s 25 (1)(b) while altogether skipping the CTE u/s 25 (1)(a) of the Water Act 1974 and Sec. 21 of the Air Act 1981.
11. That not obtaining the CTE then points to severe lacunae on the part of the UPPCB as well as the project proponents—that are not complying with the basic provisions of the Water Act and Air Act that outline the ‘environmental safeguards’ at the time of establishing a business enterprise, industry or process.
12. That by granting Consent to Operate but not the Consent to Establish the SPCB/UPPCB is not enforcing the provisions of the Water Act and the Air Act in their entirety.
13. That the objective of obtaining an NOC/CTE is not a ‘paper formality’ but is mandatory under the respective provisions of the Water Act and the Air Act, to enforce environmental compliance at the very conception of the project and such compliance charts the course of pollution mitigating measures to be adopted by such business enterprises in future.
14. That the UPPCB appears to have had mechanically issued notices to the 12 entities for their failure in not having either a CTE and a CTO but the said notice does not talk of past violations and the environmental compensation to be levied thereof.

15. That such lackadaisical approach of the UPPCB is bound to encourage violations from the hospitality industry, that would not consider obtaining a CTE to be a lawful requirement while starting a project.
16. That the Applicants humbly submit to the Hon'ble Tribunal to direct the UPPCB to take action against the listed entities under the relevant provisions of the Water Act and the Air Act against violation of their provisions in not obtaining a CTE, as well as not enforcing the CPCB guidelines apropos of OA No. 400/2017 (Westend Green Farms Society Vs Union of India & Oths.), wherein the hospitality projects individually also need to take different consents and authorizations from the respective state boards.
17. That the Applicants additionally submit most humbly to the Hon'ble Tribunal, to extend the provisions of the CPCB guidelines to all eateries, hotels, banquets, malls and restaurants in Ghaziabad city not following such guidelines as of now.
18. That therefore, the Hon'ble Tribunal, in the interest of justice may consider the above submissions and objections on behalf of the Applicants for further adjudication of the matter.

THROUGH

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