

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

Appeal No. 34 of 2023

(Air Act, 1981)

In the matter of

M/s Malbros International Pvt. Ltd. Village Mansoorwal, Tehsil Zira, District Ferozepur (through its authorized officer Shri Sapan Kayat, President Corporate Affairs and Authorized officer by the Board resolution attached)

.....Appellant

Versus

Punjab Pollution Control Board and Ors.

.... Respondents

In Re: Appeal under section 18(1) read with section 16 and 17 of National Green Tribunal Act, 2010 on behalf of appellant.

Short reply of Secretary to Government of Punjab (Appellate Authority), Department of Science, Technology and Environment (Proforma Respondent).

Respectfully showeth:

- 1) That the appellant M/s Malbros International Pvt. Ltd, Village Mansoorwal, Tehsil Zira, District Ferozepur has filed the present statutory appeal under section 18(1) read with section 16 and 17 of

National Green Tribunal Act, 2010 before the Hon'ble National Green Tribunal against the order dated 5.9.2023 of the Appellate Authority-cum- Secretary to Government of Punjab, Department of Science, Technology and Environment constituted under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

- 2) Brief facts of the case are that M/s Malbros International Pvt. Ltd., Village Mansoorwal, Tehsil Zira, District Ferozepur has filed an application for grant of consent to operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 with the Punjab Pollution Control Board and the same was refused by the Board vide an order dated 11.04.2023.
- 3) That it was observed by the Appellate Authority that the appellant has filed Civil Writ Petition No. 10458 of 2023 before the Hon'ble Punjab and Haryana High Court against the refusal of consent to operate by the Punjab Pollution Control Board under the Air (Prevention & Control of Pollution) Act, 1981. The Hon'ble Punjab and Haryana High Court vide order dated 15.05.2023 had directed that the authority shall proceed further strictly in terms of order dated 29.03.2023 passed in Civil Writ Petition no. 6818 of 2023 also filed by the appellant after complying with the statement and undertaking given on instructions from Mr. Sumer Singh Gujjar, Secretary, Science, Technology and Environment, Punjab and thereafter proceeding in the matter by taking into consideration all documents and providing an opportunity of hearing to the petitioner. The order dated 29.03.2023 of the Hon'ble Punjab and Haryana High Court passed in Civil Writ Petition No; 6818

of 2023 has been reproduced by the Board in its order dated 04.07.2023.

- 4) The Punjab Pollution Control Board has extended an opportunity of hearing to the industry to decide the application for consent to operate under the Air (Prevention and Control of Pollution) Act, 1981 in pursuance to the order dated 15.05.2023 passed by the Hon'ble Punjab and Haryana High Court in CWP no. 10458 of 2023. Thereafter, the Board has refused the consent to operate under the Air (Prevention & Control of Pollution) Act, 1981 by passing a speaking order dated 04.07.2023.
- 5) That aggrieved by the order dated 04.07.2023 passed by the Chairman, Punjab Pollution Control Board, the Appellant industry has filed an appeal before the Appellate Authority-cum-Secretary to Government of Punjab, Department of Science, Technology and Environment under the Air (Prevention & Control of Pollution) Act, 1981. The appellant industry as well as the officers of the Punjab Pollution Control Board were duly heard by the Appellate Authority by extending an opportunity of hearing.
- 6) That all the facts and circumstances of the case coupled with the relevant provisions of Law, the reports given by the Committees formed by the Government, the report of Central Pollution Control Board and the facts pointing towards the disturbance of finer environmental balance in terms of underground water were considered. Acting on the basis of doctrine of Public Trust, the Precautionary Principle in the background of Central Pollution Control Board report and considering other relevant factors (technical, environmental as well as social)

including the deficiencies pointed out by the Punjab Pollution Control Board, the appeal filed by the appellant for grant of consent to operate to the industrial unit M/s Malbros International Pvt. Ltd., under the Air (Prevention & Control of Pollution) Act, 1981 was declined and the order passed by the Punjab Pollution Control Board for refusal of consent to operate was upheld by passing a detailed speaking order a copy of which is enclosed herewith as **Annexure-A** for kind perusal of the Hon'ble National Green Tribunal. The order passed by the Appellate Authority was duly conveyed to the appellant industry as well as the Punjab Pollution Control Board vide letters dated 25.09.2023.

Submitted by

Date: 04-01-24
Place : Chandigarh



Appellate Authority
-cum-
Secretary to Government of Punjab,
Department of Science, Technology
and Environment, Chandigarh

Government of Punjab
Department of Science, Technology and Environment

Office of the Appellate Authority Constituted under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act 1981.

To

Member Secretary,
Punjab Pollution Control Board,
Nabha Road, Patiala.

No. 33/SLO/AA/2023/

Dated

Subject: Appeal filed by M/s Malbros International Pvt. Ltd., Village Mansoorwal, Tehsil Zira, District Ferozepur under the Air (Prevention & Control of Pollution) Act, 1981.

Please refer to the subject cited above..

- 2) The above said appeal stands disposed of by the Appellate Authority-cum-Secretary to Government of Punjab, Department of Science, Technology and Environment vide order dated 05.09.2023.
- 3) Please find enclosed herewith a certified copy of the said order dated 05.09.2023 for information and necessary action.

DA/As above

sd/-
Senior Law Officer
Appellate Authority

Endst. No. 33/SLO/AA/2023/

Dated

A copy of the above is forwarded to the following for information and necessary action please:

- 1) Personal Assistant to Secretary to Government of Punjab, Department of Science, Technology and Environment, Room No.726, 7th Floor, Mini Secretariat, Punjab, Sector-9, Chandigarh.
- 2) Environmental Engineer, Punjab Pollution Control Board, Regional Office, Faridkot.
- 3) M/s Malbros International Pvt. Ltd., Village Mansoorwal, Tehsil Zira, District Ferozepur.

sd/-
Senior Law Officer
Appellate Authority

Endst. No. 33/SLO/AA/2023/ 414

Dated 29/9/2023

A copy of the above is forwarded to the Chairman, Punjab Pollution Control Board, Nabha Road, Patiala for information please.

Amnik Singh
Senior Law Officer
Appellate Authority

Government of Punjab
Department of Science, Technology and Environment

Office of the Appellate Authority Constituted under the Water (Prevention and Control of Pollution) Act 1974 and the Air (Prevention and Control of Pollution) Act 1981.

Appeal No.33/SLO/AA/2023

Date of Filing:03.08.2023

Date of Decision: 05.09.2023

M/s Malbros International Pvt. Ltd.,
Village Mansoorwal, Tehsil Zira, District Ferozepur

v/s

Punjab Pollution Control Board

- Present:
1. Sh. Vaibhav Jain, Advocate alongwith Sh. Sapan Kumar, Sh. Arvind Tomar, Sh. Pawan Bansal and Sh. Nikhil on behalf of the appellant.
 2. Er. Daljit Singh, Environmental Engineer and Sh. Anish Sharma, Assistant Environmental Engineer on behalf of Punjab Pollution Control Board.

ORDER

The present appeal has been filed under section 31 (1) of the Air (Prevention and Control of Pollution) Act, 1981 by the appellant industry against the impugned order dated 4.7.2023 passed by the Chairman, Punjab Pollution Control Board refusing the application for obtaining the consent to operate of the Board under the Air (Prevention and Control of Pollution) Act, 1981.

- 2) Upon notice, the Punjab Pollution Control Board has put in its appearance through Environmental Engineer, Regional Office, Faridkot and filed reply. The reply was taken on record and copy was supplied to the appellant.

Parties were heard.



4) The counsel for the appellant submitted that the industry is engaged in distillation of spirits since 2007 at village Mansoorwal, Tehsil Zira, District Ferozepur Punjab and is equipped with Zero Discharge Technology for which Multi Effect Evaporation (MEE) Decanters, Dryer, Reverse Osmosis System (RO) and other State of the art technologies have been installed. The unit of the appellant does not discharge any effluent in the nearby water bodies as all the excess water is evaporated and reused in the distillation process through treatment. Further Electro Static Preparators (ESP) have been installed to control air pollution. The initial capacity of distillery was 100 KLD and enhanced by another plant of 180 KLD capacity for manufacturing ethanol after taking due clearance from Ministry of Environment, Forest and Climate Change (MoEFCC), Government of India. The ethanol plant started its commercial production from 3.2.2022. The appellant has obtained all the statutory permits and licenses as applicable for running of distillery, bottling plant, ethanol plant and power generation plant. The distillery has been constantly monitored by the officials of Ministry of Environment, Forest and Climate Change, Central Pollution Control Board, Punjab Pollution Control Board and other regulatory bodies and no lapse has been found in the unit of the appellant in the last 15 years.

The Monitoring Committee headed by Justice Jasbir Singh, Former Judge of Hon'ble Punjab and Haryana High Court visited the distillery and collected water samples from various locations / sites of the villages. Three sets of water samples were collected and sent to PBTI, Mohali; M/s Shri Ram Institute of Industrial Research, Delhi and Punjab Pollution Control Board laboratory for testing. Based on discussions held with the officers of various departments, village panchayats and field visits made by the Monitoring Committee and collection of ground water samples, soil samples and reports submitted by the departments, the Monitoring Committee in its report dated 21.9.2022 concluded that the ground water contamination was due to fecal contamination which was due to domestic sources and further that the possibility of discharge of industrial effluent in underground water was feeble. The Monitoring Committee of the Hon'ble National Green Tribunal also reached a definite conclusion that the unit was not causing any environmental pollution.

The Counsel for the appellant stated that since 23.7.2022, the factory premises of the industry remained closed due to illegal and motivated protests by the nearby villagers and the industry was constrained to approach the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 16500 of 2022. The Hon'ble Punjab and Haryana High Court vide order



dated 29.7.2022 has issued directions to the State machineries to take steps to ensure that no hindrances are created in ingress and egress of the factory premises by the illegal protests. However, the State Government failed to comply with the aforesaid order. The Hon'ble Punjab and Haryana High Court vide orders dated 11.10.2022 and 22.11.2022 had directed the State of Punjab to deposit the amount of Rs. 5.0 Crores and 15.0 Crores respectively with the registry of the Hon'ble Court and recorded in the order dated 11.10.2022 that the unit of the appellant was compliant of all laws and that the Monitoring Committee of the National Green Tribunal has found that the appellant was not causing any pollution.

However, the State Government has formed four committees in consultation with the protestors to look into various grouses espoused by the protestors so as to amicably resolve the issue.

Contesting the report of water and soil committee with regard to the presence of the heavy metals in the water, the counsel for the appellant stated that there is a huge difference in the analyzed values of the parameters in the samples collected from tube-wells located very close to each other. The appellant has added additional land recently in the existing premises of the industry and the tube-well was located in the agriculture land where in the owner of the land was sowing different crops. The unit is not using any chemical in the process containing heavy metals, as such it is proven fact that the industry discharges wastewater containing only organic pollutants. Therefore, the presence of heavy metals may be due to use of inorganic fertilizers (DAP/ Urea) including pesticides, insecticides, herbicides, weedicides to get good yield of crop by the farmer.

The report of soil and crop damage committee has recorded that the fertility parameters in normal range the heavy metals concentrations in the farmers' fields in both list of affected and reference non affected villages were comparable and well within their respective normal range.

As per the report on loss of animal and buffalos, the animals have died because of the nitrate / nitrate toxicity which may be due to toxic levels of nitrate in plants at that time.

The committee formed to investigate the increasing cases of cancer, hepatitis-B etc. in the villages surrounding the factory has also given a favorable report stating that the cause of deaths due to cancer in the region is below then the national average. The cases of Hepatitis B and C have not been attributed or linked to the industry.



The counsel for the appellant also contested the report of the Central Pollution Control Board and stated that the Central Pollution Control Board has acted ultra vires beyond its jurisdiction. The CPCB in its report has shown the slopes of water table towards NHW from the industry i.e. towards village Mahianwala Kalan. To examine the CPCB report, the industry had sought help from two renowned Hydrologists and their report clearly state the slope of water table from NE to SW from Zira towards the industry, hence the whole basis of CPCB reports and analysis are found to be false and the same has been made with an intent to harm the interest of the industry. As regards to higher concentration of cyanide, selenium, manganese, iron, arsenic, chromium, copper, nickel, lead in the CPCB report, the counsel stated that the unit is not generating any wastewater containing the pollutants. Therefore, the presence of these pollutants in the ground water is required to be investigated by carrying out detailed study. The counsel further stated that the industry had remained closed during the tenure of all these samplings and the report has been intentionally prepared by the CPCB team with political motive to damage the interests of the industry. The directions issued by the CPCB are ultra-vires as the case is sub judice with the Hon'ble Punjab and Haryana High Court and the National Green Tribunal.

The counsel stated that the Punjab Pollution Control Board has reached a completely erroneous conclusion and was under pressure to take a decision to close down the factory of the appellant. The Punjab Pollution Control Board has refused the consent to operate to the industrial unit of the appellant vide order dated 4.7.2023 on the basis of some unwarranted reasons. The appellant industry has complied with the objections raised by the Board and relevant documents have been attached and the details were given by the appellant.

With the above submissions, the counsel for the appellant requested to set aside the order passed by the Board and issuance of directions for grant of consent to operate to the industrial unit under the provisions of the Air (Prevention and Control of Pollution) Act, 1981.

5) The officers of the Board stated that the Board has decided the consent to operate application of the industry under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 on merits, after considering all the facts. The application was not complete in all respects and was lacking in the production of substantial material to show compliance of the conditions of consent already imposed by the Board in the consent to



operate letter earlier granted under the provisions of the Air (Prevention and Control of Pollution) Act, 1981. The reasons were clearly mentioned in the order dated 4.7.2023 whereby consent to operate was refused under the Air (Prevention and Control of Pollution) Act, 1981. The compliances now alleged to be shown by the industry to the reasons for refusal of consent to operate have also been examined and it is observed that the industry is still not complying with all the conditions as explained in the refusal letter.

The officer of the Board further stated that the Government of Punjab has also constituted four different committees vide order dated 21.12.2022 and 25.12.2022 with regard to Water Pollution, Public Health Risks (Cancer and Hepatitis) in nearby villages, soil and crop damage / revenue loss of cattle in adjacent areas to look into the grievances of villages relating to appellant industry. The reports given by different committees are also required to be considered.

The officer of the Board stated that the Central Pollution Control Board vide letter dated 17.5.2023 has issued directions u/s 18(1) (b) of the Water (Prevention and Control of Pollution) Act, 1974 considering the complaint against acute pollution of groundwater caused by M/s Malbros International Pvt. Ltd. (Malbros Distillery), Village Mansoorwal, Tehsil Zira, District Ferozepur to the Punjab Pollution Control Board after visiting the unit along with experts deputed by the Central Ground Water Board (CGWB). As per the Central Pollution Control Board report, the groundwater was found to be affected with high concentration of metals and heavy metals (toxic elements) in three villages namely Monsoorwal, Mahianwala Kalan and Rotal Rohi and this finding is in line with the slope of water table in the area as determined by the CGWB team. Hence, the report of Central Pollution Control Board may also be considered to decide the consent application of the industry under the Air (Prevention and Control of Pollution) Act, 1981 and the consent to operate to the appellant may be declined.

6) After hearing the counsel and the representatives of the appellant, the officers of the Board and examination of relevant record, it is observed that while hearing CWP no. 10458 of 2023 filed by the appellant herein against the refusal of consent to operate by the Punjab Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981, the Hon'ble Punjab and Haryana High Court vide order dated 15.5.2023 had directed that the authority shall proceed further strictly in terms of order dated 29.3.2023 passed in CWP 6818 of 2023 (also filed by the appellant herein) after complying with the statement and



undertaking given on instructions from Mr. Sumer Singh Gujar, Secretary, Science, Technology and Environment, Punjab and thereafter proceedings in the matter by taking into consideration all documents and providing an opportunity of hearing to the petitioner, the same will be decided as far as possible within a period of two weeks.

7) The Board has afforded an opportunity of hearing to the appellant and after considering all the facts and circumstances of the case, the Chairman, Punjab Pollution Control Board has refused the application for obtaining the consent to operate of the appellant under the Air (Prevention and Control of Pollution) Act, 1981 by passing a detailed order dated 30.6.2023. The order was conveyed to the appellant vide letter no. 2135 dated 4.7.2023 by Zonal Office of the Board at Bathinda. The appellant, however, has not enclosed the copy of the order dated 30.6.2023/4.7.2023 of the Board with the appeal case.

8) The main gróuse of the appellant is that the Punjab Pollution Control Board while deciding the application for consent to operate under Air (Prevention and Control of Pollution) Act, 1981 has not considered the reports of the monitoring committee as well as that of Punjab Pollution Control Board. In this regard, it is observed that the Board has duly considered the said report of the monitoring committee and the Punjab Pollution Control Board, but these reports in my opinion cannot be relied upon for long duration of time nay forever.

The Board has specially stated in its reply that the appellant was found deficient in compliance of the conditions of the Board and that has resulted into the refusal of consent to operate. The examination of the reasons for refusal of consent to operate as recorded by the Board in the refusal order dated 30.6.2023 /4.7.2023 under the Air (Prevention and Control of Pollution) Act, 1981, reply given by the appellant vis-à-vis the further comments given by the Board in reference to the compliance reported by the appellant has brought out the shortcomings, which are reproduced herein below:

- a) The industry has submitted copy of log book wherein parameters have not been mentioned that indicate the operation and maintenance of APCD. Hence, the log book submitted cannot be relied upon.
- b) There is no concern of connectivity of the OCEMS with the operation / closing of the industry, as during the operation it shows the value of parameters and during non-operation of the industry it will show the value of parameter (atmospheric value). As such, the claim of the industry regarding offline mode of OCEMs is not justified.



- c) The industry has submitted copy of log book wherein it has not mentioned parameters / reports that indicate the regular operation and maintenance of APCD.
- d) The industry has not submitted time bound action plan regarding allocation of 2.5% of the total project cost for enterprise social commitment as per conditions of the Environmental Clearance and has only submitted that they have spent Rs. 6.51 Lakhs for social commitment for the environment concerns. As such, the reply submitted by the industry is not satisfactory as per shortcoming raised.
- e) From perusals of the medical certificates of employees submitted by the industry, it can be concluded that there has been no mention of the reference on the medical certificates and it seems tempering of the signatures of the certificate issuing authority. As such, the data provided by the industry cannot be relied upon.
- f) There has been no dimensional marking on the plantation area developed / proposed by the industry in the layout plan submitted, as such plantation area cannot be calculated.

9) The State Pollution Control Board under section 21 of the Air (Prevention and Control of Pollution) Act, 1981 is empowered to make such enquiry in respect of application for consent and may grant its consent subject to such conditions as may be imposed. The Board, thus, in my opinion is under statutory obligation to regulate the conditions of consent to operate in accordance with Law. The Board is also empowered to refuse further consent under the Air (Prevention and Control of Pollution) Act, 1981 for the reasons to be recorded in writing if the conditions subject to which such consent has been granted are not fulfilled after giving a reasonable opportunity of being heard. The perusal of the order passed by the Board has revealed that the Board has afforded an opportunity of hearing to the appellant and has thereafter refused the consent to operate by recording the reasons in writing. Hence, the decision of the Board cannot be termed as an arbitrary decision.

10) Apart from the above, the reports of different committees constituted by the Chief Secretary to Government of Punjab vide office order no.5/94/2022-274/8401-8410 dated 21.12.2022 and 5/94/2022-274/8463 dated 25.12.2022 for the purpose of examination of water pollution and Public Hearing; Public Health Risks, Soil and crop damage/ revenue loss



of cattle in adjacent area have also been examined. The reports have made some starting revelations about the prevalent circumstances and the same are summarized herein below:

A) Water/ Sludge Committee (Interim report)

The members of the monitoring committee comprising Dr. Indramani Dhada, Expert IIT Ropar, Prof Dwarika Nath Ratta, Expert TEIT, Patiala and Prof M.S Bhatti Expert GNDU Amritsar in reference to letter no. 5/94/2022-2G4/8463 dated 25.12.2022 of Chief Secretary, Punjab regarding Malbors Factory Zira related complaints with specific objectives related to water pollution have given report in the case which was furnished to the Chairman, Punjab Pollution Control Board by the office of Deputy Commissioner, Ferozpur vide memo no. MA/MC-1/2023/667 dated 28.3.2023.

From the perusal of the report, it is observed that the Monitoring Committee visited the site, did a reconnaissance survey of the area and were apprised of the grievances of the Sanjha Morcha Constituted by the Deputy Commissioner, Ferozpur. The committee members visited the industry and villages within 5 km radius from industry on 26.12.2022, 27.12.2022 and 5.1.2023 and shortlisted a total of 13 sites for sampling (seven within industry premises, six within 5 Km radius from industry) borewells samples (5 nos.) were collected from the industry premises with soil samples (2 nos.) collected by designed officials from NABL laboratory independently in presence of committee members. As a control measure, six borewell samples from nearby area (within 5 km radius) were collected to compare the data. A total of 13 samples were collected based upon the test report by NABL accredited laboratory i) SAI Laboratory, Patiala; ii) Shri Ram Institute for Industrial Research (Delhi) and iii) CSIR-IITR(Lucknow) following references have been delineated.

- a) Parameters concerning toxic substances including lead, chromium, arsenic, polychlorinated biphenyl's (PCB), phenolic compounds (undesirable in excessive amounts) are found in the water samples from Malbros industry and values have been found above the permissible limits set by Indian standard for Drinking water.



- b) Concentration of lead found in the water sample is 0.26 ppm which is more than the permissible limit of 0.01 ppm in the Malbros industry.
- c) Concentration of phenolic compounds as C_6H_5OH in the water sample is 0.16 ppm which is more than the permissible limit of 0.002 ppm in the Malbros industry.
- d) Concentration of chromium found in the water sample is 0.22 ppm which is more than the permissible limit of 0.05 ppm in the Malbros industry.
- e) Concentration of Poly chlorinated biphenyl found in the water sample is 245 microgram/L which is more than the permissible limit of 0.5 microgram/L. in the Malbros industry.
- f) Large excavated area with sludge /ash is seen in the Malbros industry. Also, visible in google map.
- g) High concentration of Volatile Fatty Acids found in the soil sample from Malbros industry.
- h) High concentration of objectionable / toxic elements found in soil samples (Manganese 145000 mg Kg. Copper 1602 mg/Kg and Lead 16.60 mg/Kg) from Malbros industry. These test results can be correlated with control soil samples from the area.
- i) Results of comet assay for DNA damage is pending from CSIR-Indian Institute of lexicological Research, Lucknow.
- j) Results of detection of DNA damage tests using (i) Micronucleus (j) chromosomal aberration test as per OECD norm is pending from Shriram Institute for Industrial Research, Delhi.

B) Report of Soil and Crop Damage Committee

Soil and Crop damage committee comprising of Dr. PPS Pannu, Additional Director of Research, Dr. Dharminder Singh, Principal Soil Chemist; Dr. J.P Singh, Head Department of Soil and Water Engineering has submitted its report to Deputy Commissioner, Ferozpur. The important inferences drawn by the committee are reproduced herein below:

- a) Regarding the analysis of Soil fertility parameters of farmer's fields, soil pH was relatively higher in the listed affected villages in comparison to



the reference / not in the list of affected villages was alkaline and at one site the soil was sodic. There is need of amendments such as green manuring farm yard manure or gypsum.

- b) Among the affected village the pH of two soil samples collected from the fields located behind the factory (9.14 and 9.34) and nearby villages such as Sunher (8.99) and Badala Purana (9.14 and 8.64) were observed to be higher than the average soil pH (8.62) of these villages. This could possibly be due to the deposition of ash flow from the factory in the nearby field during the times when factory was in operation.
- c) Regarding sugar mill area backside of the factory, the vegetation was almost dead. The fertility parameters such as organic carbon and available nutrient such as phosphorus, copper, zinc, manganese and baron of soil samples collected from this area were extremely high. Soil inside the factory has high pH, electrical conductivity and available potassium.
- d) The analysis of profile sludge sample (comprising of 7 sub samples up to 180 cm depth) from sludge dump revealed that there was a gradual increase in the concentration of heavy metals such as chromium, lead, nickel and arsenic up to 180 cm depth. Substantially higher concentration of all micronutrients and heavy metals were observed at 150-180 cm depth. This suggests a possibility downward movement of these metals which may end up into the groundwater.

11) That it is relevant to mention here that in the background complaints of acute pollution of ground water caused by M/s Malbros International Private Ltd. (Malbros Distillery), the Central Pollution Control Board after visiting the unit along with experts deputed by the Central Ground Water Board had issued certain directions to the Punjab Pollution Control Board vide letter dated 17.5.2023 u/s 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974. The report of the Central Pollution Control Board was duly supplied to the appellant industry by the Punjab Pollution Control Board and the conclusions drawn in the report of the CPCB are reproduced here in below:-

- i) Ground water level ranges from 28.44 to 32.07 m BGL (below ground level) in the study area in the monitored tube-wells and the slope of water table is towards NNW from the factory area.



- ii) It was alleged that "The distillery has drilled 25 deep tube-wells in their Compound and dumping toxic water in them leading to high pollution in ground water in radius of 15 Kms, polluting drinking & Irrigation water of over dozen villages". In this regard, CPCB Team physically verified 10 Bore-wells and 06 Piezometers installed in the premises of the industry. The representatives of the industry informed that they have obtained permission for 04 bore-wells and 02 piezometers from CGWB/PWRDA, however no details were provided. The industry was also asked to provide the date of installation and the assembly drawing of the bore-wells / piezometers installed in the premises, to know the depth of the bore-well and the zone tapped, but the details are still awaited despite follow up with PPCB and the Industry.
- iii) The existence of such a large number of bore-wells without obtaining permission of CGWB and/or PWRDA in the premises of an industry, claiming to Zero Liquid Discharge is an area of further investigation.
- iv) Further, two bore-wells inside the premises were found to be installed at a distance of few meter from each other, sealed and buried in the soil, despite the fact the 200 mtr distance between two bore-wells is required as per guidelines.
- v) In view of the fact that most of ground water structures identified by CPCB team have been installed by the Industry without obtaining permission from CGWB/PWRDA, the possibility of having more such structures installed illegally without obtaining permission as apprehended in the letter of Hon'ble Member of Parliament (Lok Sabha), can't be ruled out and thus needs further investigation by involving local revenue department, to know the details of the borewell Is existing at the time of acquiring the land from the local fanners, by the Industry.
- vi) Out of 29 bore-well monitored, 12 bore-wells were yielding water with unpleasant odour, whereas 05 Bore-wells were yielding water with unpleasant odour and Grey/blackish colour, which is also evident and confirmed from the high instrumental analysis values for colour and turbidity.



- vii) The evaluation of data with regard to analysis results of ground water samples for general parameters, revealed that water from none of the 29 bore-wells monitored by CPCB Teams comply with the acceptable and permissible limits for one or more parameters, thereby rendering the water unfit for drinking. TDS, Boron and Sulphate were found be present in very high concentration and beyond acceptable and permissible limits in many samples. While high TDS and sulphate concentration may be an outcome of the Industrial activity, however, the exceedance of Boron may not be attributed to the industry under reference.
- viii) The ground water was found to be affected with high concentration of metals and heavy metals (Toxic Elements) in three villages namely Mansoorwal, Mahianwala Kalan and & Ratol Rohi and this finding is in line with the slope of water table in the area, as determined by the CGWB team.
- ix) The presence of cyanide in the borewell located at Village & Ratol Rohi at a concentration of 0.2 mg, which is four times higher than the acceptable limit of 0.05 mg/l, as specified in IS 10500:2012 is an area of concern. Further investigation to pin points the source of this contamination is required in the interest of public health. The same borewell was also found to be having high concentration of Arsenic and very high concentration of lead, as well.
- x) One borewell with 250 ft depth monitored at Village Mahianwala was found be having high concentration of Selenium, Manganese and Iron exceeding the acceptable & permissible limits, while the other borewell with approx. 500 ft depth was found to be having high concentration of iron and manganese exceeding both acceptable and permissible limits.
- xi) The evaluation of the analysis reports w.r.t. monitoring of 02 borewells located in the premises revealed that metals and toxic metals namely Arsenic, Chromium, Copper, Iron, Manganese, Nickel, Lead and Selenium, are present in very high concentration.
- xii) The concentration of COD and Colour was also very high in these two borewells located in the premises of the industry. The water from both the



borewell was having black colour and foul odour, as observed during sampling. In these borewells, concentration of Arsenic was found to be 2-3 time higher than permissible limits. Similarly, concentration of Chromium, Iron, Manganese, Nickel and Lead were found to be higher by 6-7 times, 650-800 times, 32-37 times, 10-11 times and 8-13 times respectively in comparison to permissible limits specified in IS 10500:2012.

- xiii) Despite the fact that these two borewells were in operational condition, motor, electrical and mechanical connections of one borewells was disconnected, while the other bore-well was sealed and buried in the soil.
- xiv) Since, the samples drawn from the piezometers and 03 bore-wells located in the premises of the industry were found to be free from heavy metal contamination and whereas two bore-wells installed in the same premises are contaminated with high concentration of heavy metals, COD and Colour; it indicates injection of contaminated waste water through reverse boring/pumping into a particular zone tapped in these two bore-wells. However, further investigation is required in this regard, to establish the contaminated zone and take remedial action.
- xv) The sample of the soil contaminated with the sludge was found to be exceeding the Soil Criteria of CCME Canadian Environmental Quality Guidelines for the Protection of Environment and Human Health, for Soil Type (Industry) with regard to Zinc (396.84 mg > 361 mg/Kg), while other elements were within limits. However, further investigation is required to find the contamination at deeper levels and also outside the premises, where photographic and video graphic evidences are available, in the interest of public.
- xvi) Local administration is required to take necessary action to red mark the contaminated bore-wells, to avoid use of contaminated ground water as drinking water, irrespective of the source of contamination, in the interest of public health.
- xvii) Bio-magnification studies are required to know the effect of contaminated water on the crops and accumulation of contaminants in the agro crops and the health risk associated with it, so as to ensure corrective action on the basis of the outcome of the study, if required.



xviii) CPCB had requested further details (Annexure-1) from M/s Malbros International Pvt. Ltd, for comparing the outcome with the base-line data, correlation and decide further course of investigation and remediation, which are still awaited despite follow up with PPCB and the Industry (Annexure-2).

12) It is observed that the Central Pollution Control Board is the premier and apex regulatory authority established under an Act of the Parliament of India for the prevention, control and abatement of water and air pollution including noise and is performing its functions in a highly professional manner. The report of Central Pollution Control Board is clearly showing ground water contamination with various parameters of pollutants / heavy metals exceeding the prescribed limits. The report of the Central Pollution Control Board, as such, cannot be discarded in a casual manner without consideration.

13) The perusal of the order passed by the Board confirms that the Punjab Pollution Control Board while passing the order for refusal of consent to operate under the Air (Prevention and Control of Pollution) Act, 1981 has not considered and relied solely on the report of the Central Pollution Control Board, but has considered other aspects of the case including the deficiencies in respect of the conditions of the consent earlier granted by the Board and the conditions imposed in the Environmental Clearance granted by the Ministry of Environment, Forest and Climate Change to the appellants industry.

14) Another observation which is weighing heavily on my mind is that as to whether the State Pollution Control Boards being the statutory regulatory authorities can oppose the action of the Central Pollution Control Board. The answer to the observation is not in the affirmative legally. The State Pollution Control Boards being the statutory regulatory authorities to implement the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 does not in any manner oppose the actions of the Central Pollution Control Board. In terms of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 as well as the Air (Prevention and Control of Pollution) Act, 1981 as contained in Section 18(1) (b) of both the Acts, the State Pollution Control Boards are bound to comply with the directions of the Central Pollution Control Board. The perusal of the case has confirmed that the Central Pollution Control Board after due consideration of the matter, in fact, has issued directions in the present case vide letter no.PL-20/50/2022-IPC-III-HO-CPCB-HO/1246 dated 14.5.2023 to the



Punjab Pollution Control Board u/s 18(1) (b) of the Water (Prevention and Control of Pollution) Act, 1974 and the said directions are reproduced herein below:

- a) Punjab Pollution Control Board (PPCB) considering the violations reported in the CPCB inspection report (Annexure-1) shall ensure appropriate direction to the unit (M/s Malbros International Pvt. Ltd., (Malbros Distillery), Village Mansoorwal, Zira, Ferozepur, Punjab) with respect to necessary remedial measures for the decontamination of the affected site and compliance with the violations observed in the inspection report.
- b) PPCB shall undertake detailed environmental site assessment, as per the CPCB guidelines, by engaging a professional agency / institute having expertise in assessment and remediation of contaminated groundwater and soil and submit the report within 60 days.
- c) Based on the detailed site assessment, PPCB shall ensure that the unit submit a DPR for remediation of groundwater contaminated area in around the premises and execute the work in the supervision of PPCB in a time bound manner. The unit shall bear all the remediation expenses.
- d) PPCB shall impose Environmental Compensation (EC) or initiate legal action for causing injury to the surrounding environment and contamination of groundwater as may be applicable.
- e) PPCB shall issue appropriate direction to the water supply department to analyze the parameters for Drinking Water Quality Standards in water of bore-wells installed in the affected area. Depending upon the compliance with the Drinking Water Quality Standards, the use of water from the bore-wells may be prohibited / permitted, as per the case and shall ensure that the unit provide alternative sources of safe drinking water to the affected villages.
- f) PPCB shall issue direction to local authorities and groundwater department to seal the unauthorized bore-wells.
- g) PPCB shall ensure regular monitoring of the groundwater quality in the area and shall ensure no further spread of contamination.



15) To a specific query with regard to the status of the directions issued by the Central Pollution Control Board under section 18 (1)(b) of the Water (Prevention and Control of Pollution) Act, 1974, the officer present on behalf of the Punjab Pollution Control Board confirmed that the Board has initiated action to implement the directions of the Central Pollution Control Board.

16) After examination of the Water / Sludge Committee report, the Chairman, Punjab Pollution Control Board in paragraph 13 of the order dated 30.6.2023 / 4.7.2023 has recorded his observations to the effect that the revelations in the water soil sludge report are damaging to the natural environment. Though heavy metals normally occur in nature and are essential to life but become toxic through accumulation in organisms. Arsenic, cadmium, chromium, copper, nickel, lead and mercury, the accumulation of which has been shown in the report are the most common heavy metals which can pollute the environment. Excessive accumulation of these heavy metals in the underground water can disturb the finer balance of natural environmental. Hence, the disturbance has to be stopped at the early stage with no relaxation else it may lead to further contamination of underground water. The accumulation of the heavy metals beneath the land in underground water can be logically attributed to the industry in view of the reports of the expert committee in the absence of any other realistic and practicable reason. After considering the matter, I hereby endorse these observations of the Chairman, Punjab Pollution Control Board.

17) The relevancy of mentioning the reports of different committees and that of the Central Pollution Control Board in the case relating to the air consent is that the ash which is the source of air pollution has been found in the soil and the vegetation was almost found dead in the area backside of the factory. To make an industrial unit operational, it is mandatory that the industrial unit shall be compliant under the Water (Prevention & Control of Pollution) Act, 1974 as well as the Air (Prevention & Control of Pollution) Act, 1981.

18) It is germane to mention here that water occurs naturally in the environment and is useful to humans and other living organisms. The surface water, subsurface river flow, groundwater are all natural resources of fresh water. Ground water is a renewable and exhaustible natural resource and is part of the natural water cycle. However, the ground water is polluted by human activities. The Hon'ble Supreme Court of India has applied the term Public Trust with regard to the protection and preservation of natural resources. The State as trustee has its obligation to protect and promote the environment. In view of these



facts, nobody can be allowed to contaminate the groundwater, which is lifeline to the living organisms as well as the vegetation.

In view of the facts and circumstances of the case, it would be apt and appropriate, if the principle of precaution is applied. The precautionary principle states that if a product, an action or policy has a suspected risk of causing harm to the public or to the environment, protective action should be supported before there is complete scientific proof of risk. When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause-and-effect relationships are not fully established scientifically. The Hon'ble Supreme Court of India while explaining the scope of the precautionary principle in M.C Mehta v/s Union of India has stated that the principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. The State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation.

18) It is further relevant to brought on record that the Constitution of India reflects the concern for the environment and it also guarantees the right to a clean environment to its citizens. Public trust doctrine enforces a legal right for the general public and a positive obligation for the state to perform its duty.

19) I have also considered the case with regard to public protests. The Public perception simply means the type of information obtained from a public opinion. The Public perception is not necessarily inaccurate or based on something other than the truth. The public at large can often receive enough factual information in order to form a general opinion about a public figure, celebrity or industry without relying on innuendo or unfounded rumors. Public opinion is the collective opinion on specific topic relevant to society and it is the peoples' views on matters affecting them. The Public perception is also not in favor of the appellant industry and the people of the area are protesting against the operation of the industrial unit of the appellant on regular basis.

20) The consideration of all the facts and circumstances of the case coupled with the relevant provisions of Law, the deficiencies pointed out by the Board, the report given by the committees formed by the Government, the report of the Central Pollution Control Board and further consideration of the facts pointing towards the disturbance of finer environmental balance in terms of underground water does not allow the grant of consent to



operate to the appellant industry under the provisions of the Air (Prevention and Control of Pollution) Act, 1981. The protection and preservation of environment outweighs the materialistic articles and objects. Acting on the basis of doctrine of Public Trust, the Precautionary Principle in the background of the CPCB report and considering other relevant factors (technical, environmental as well as social) including the deficiencies pointed out by the Punjab Pollution Control Board, I am not inclined to allow the operation of the industrial unit of the appellant. Hence, the appeal filed by the appellant for grant of consent to operate to the industrial unit M/s Malbros International Pvt. Ltd. under the Air (Prevention and Control of Pollution) Act, 1981 is declined and the order passed by the Punjab Pollution Control Board for refusal of consent to operate is upheld.

21) The appeal stands disposed of in above terms. File be consigned to record.



Sd/-
(Rahul Tewari, IAS)
Appellate Authority
-cum-

Secretary to Government of Punjab,
Department of Science, Technology
and Environment, Chandigarh.

Certified Copy

Amit Singh
Senior Law Officer
Appellate Authority
Government of Punjab
Deptt. of Science, Technology
and Environment, CHD
25-09-2023