

**BEFORE THE NATIONAL GREEN TRIBUNAL
SITTING AT NEW DELHI
MEMORANDUM OF APPEAL
(Under Section 18 (1) read with Section 16 of
National Green Tribunal Act, 2010)
APPEAL NO. 19 OF 2024**

IN THE MATTER:

Amazon Seller Services Private Limited ("ASSPL")Appellant

Versus

Chairman, Haryana State Pollution Control Board, Panchkula
& AnotherRespondents

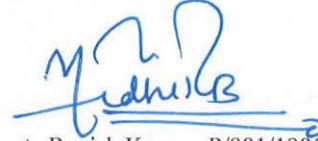
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Place: New Delhi

Date: 13.05.2024

Through



(Advocate Ravish Kumar; P/981/1985)

(Advocate Nidhi Raj Bindra; D/386/2013)

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(Advocates for the Appellant)

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WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT

MOST RESPECTFULLY SHEWETH:

1. That the Appellant has filed the present appeal against the Impugned Order dated 22 February 2024 (*communicated to the Appellant by the Respondent No.2 on 27 February 2024*). The contents of the appeal be read as part and parcel of written submissions.
2. In continuation of detailed oral arguments addressed by the counsel for the Appellant on 08 May 2024 and 09 May 2024, it is prayed that the following points may be considered while disposing the Appeal on merits:

PART-I

On Merits:

1. The Appellant through test reports¹ issued by independent NABL accredited laboratories established that the STP of the Appellant’s Unit was always treating the domestic wastewater within the prescribed limits prior to date of collection of alleged defective sample. Further, another test report of the sample taken on 09.12.2022 (*i.e. the date when the allegedly defective sample was collected by the Respondent No.2*) issued by independent NABL accredited laboratory also showed that the STP was treating the water as per the prescribed limits², which was further confirmed by another test report by another independent NABL accredited laboratory of the sample taken on 29.12.2022³. **In nutshell, the Appellant established to the Respondents that the STP was performing and treating the domestic wastewater within prescribed limits starting from June 2022 till December 2022 and that there was not any non-compliance by the Appellant and the same collected from the STP on the date when in-line maintenance was carried out by the Appellant, should not be treated as violation by the Appellant.**
2. Despite having received and acknowledged the Annexure 4, 5 and 6 submitted with Response to the Show Cause Notice⁴, the Respondents failed

¹ Annexure-4 (Colly)- Page 45-76 of the Appeal.

² Annexure-5 - Page 77-79 of the Appeal.

³ Annexure-6 Page 80-82 of the Appeal.

⁴ Annexure-9- Page 86-87 of the Appeal.

to rebut the claim of continuous compliance by the Appellant nor did the Respondents pass any speaking order accepting/rejecting the contentions raised by the Appellant.

3. The Respondent No.2 has failed to pass any speaking order on the reasons and justification submitted by the Appellant in its Response to the Show Cause Notice on the alleged violation of the environmental norms by the Appellant. By doing so, the Respondent No.2 have violated the Order dated 23.08.2021 passed by Sh. S. Narayanan, IFS, Member Secretary, Haryana State Pollution Control Board, internet copy of the order has been filed with Hon'ble Tribunal on 09 May 2024 (*Attached as Annexure-X*)⁵.
4. Without prejudice to the other contentions, the Respondents have failed to provide any lawful justification as to why the environment compensation first calculated for 32 days was increased to 70 days when the minutes of the meeting of Environment Compensation Assessment Committee also counted the alleged days of non-compliance to be 32 days. The Respondents cannot be permitted a self-serving interpretation of the minutes of meeting of the said committee ⁶.
5. Further, the case of the Respondents is that environment compensation was calculated from date of the allegedly defective sample i.e. 09.12.2022 till the time of deposit of Performance Security Deposit of INR 3,00,000/- i.e., 16.02.2023. Such methodology of calculating the alleged days/period of non-compliance is not mandated by Methodology for Assessment of Environmental Compensation (the "EC Policy") or any office order/circular of the Respondent No.1. The Respondent No.1 have failed to provide documentary proof/ justification despite repeated enquiries from this Hon'ble Tribunal.
6. The conduct of the Respondents in taking 10 months for arranging for the re-sampling which clearly showed that the Appellant was compliant to the prescribed norms which also resulted in compliant report in favour of the Appellant and renewal of Consent to Operate for another 5 years, does show lack of concern on part of the Respondents for the environment and unfortunately shows that the Respondents are only interested in levying environment compensation in a self-serving manner.

⁵ Therefore, in view of above and in super-session of relevant clause of this office orders endst. no. HSPCB/PLG/2018/2599 dated 05.12.2018, orders endst. no. HSPCB/PLG/2018/1074-1100 dated 22.05.2018, letter no. HSPCB/PLG/2020/1234-1259 dated 21.01.2020, and letter no. HSPCB/PLG/2020/1171-1198 dated 18.06.2020, it is hereby ordered that;

⁶ "vii. Regional Officers shall dispose of the show cause notice immediately after the expiry of period of show cause notice. In case any reply is submitted by the unit, then Regional Officer shall pass a speaking order in an annotated form by indicating the deficiencies/ observations conveyed through show cause notice and reply submitted by unit based on merits of the case regarding acceptance /rejection of same. In case reply not submitted by such units, then same shall also be mentioned in speaking order. The Regional Officer shall send a copy of the speaking order to Head Office with recommendation. In case reply received after expiry of period of show cause notice, before or after sending recommendations for taking action then same shall also be disposed of by passing speaking order clearly indicating merits of case."

⁶ Page-28 of the documents filed by the Respondents on 09.05.2024: "In view of above, after detailed deliberations, the committee is of the opinion that the number of days of violation made by the unit in this case has to be taken 32 days i.e. 09.12.2022 (date of sampling) to 16.02.2023 (date of reply)"

7. The Impugned Order is perverse to the records produced before the Respondents as well as this Hon'ble Tribunal and is unsustainable in eyes of law.

PART-II

On Implementation of the EC Policy:

1. The Appellant's Unit is not an industry generating trade effluents being an STP managed Unit, hence Chapter 1 of the EC Policy is not applicable in the present case and as such the Impugned Order levying environment compensation of INR 13,12,500/- is without any basis as environment compensation, if any, for the STP Managed Unit was to be levied under Chapter 4 of the EC Policy. The Impugned Order as such is liable to be set aside as non-est since the very edifice according to which the environment compensation has been calculated in the Impugned Order is wrong⁷. The entire proceedings conducted by the Respondents leading to passing of the Impugned Order are ultra vires to the EC Policy.

The above facts and circumstances indicate that the Impugned Order has been passed without application of mind in a hasty and self-serving manner and without appreciating the objective and purpose of the EC Policy.

PRAYER

It is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- (a) Allow the present appeal and set aside the Impugned Order;
- (b) Pass such others, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

Place: New Delhi

Date: 13.05.2024

Through



(Advocate Ravish Kumar; P/981/1985)

(Advocate Nidhi Raj Bindra; D/386/2013)

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⁷ Annexure-21, Page 133 and 139.

(Annexure-x) 4

HARYANA STATE POLLUTION CONTROL BOARD**C-11 Sector-6, Panchkula****Ph - 0172- 577870-73, Fax No. 2581201****E-mail- hspcbho@gmail.com****Website: hspcb.gov.in****ORDER**

Whereas, Government of Haryana has notified the rules i.e. Haryana Water (Prevention and Control of Pollution) Rules, 1978 (as amended) (hereinafter referred to as Water Rules) and Haryana Air (Prevention and Control of Pollution) Rules, 1983 (as amended) (hereinafter referred to as Air Rules) as per provisions of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as Water Act) and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as Air Act), respectively;

Whereas, Board vide orders endst no. HSPCB/PLG-142/2016/5371-5395 dated 24.02.2016 had issued the inspection policy (as amended) containing procedure of inspection and sampling of various industrial sectors/ nonindustrial sectors/units (hereinafter referred to as units) covered under consent management of the Board and units operating without obtaining mandatory consent of the Board;

Whereas, vide office order endst no. HSPCB/PLG/2018/2599 dated 05.12.2018, it had been ordered that all the Regional Officers will not issue more than one show cause notice to the defaulting units in future and copy of show cause issued by them will be sent to Head Office. The show cause notice will dispose off immediately after the expiry of period of same, based on submission of the reply by the units in response to show cause notice. Regional Officer will disposed off the show cause notice by passing a speaking order clearly indicating the merits of the case regarding acceptance /rejection or non submission of the reply submitted by the units with a copy of the decision to Head Office.

Whereas, vide endst no. HSPCB/PLG/2018/1074-1100 dated 22.05.2018, it had been ordered that no permission of head office will be required to re-seal the units which were closed and sealed by the Board but found broken the seal and/or operating illegally in violation of closure orders issued by the Board under various Environmental Acts. Regional Office shall re-seal such units at their level in reference to the standing closure orders after following the due procedure and collecting the necessary evidence to prove the violation made by such unit for filing prosecution case against such units and persons/directors responsible for its day to day working / activities for above violations.

Whereas Board vide orders endst no. HSPCB/PLG/2019/380-402 dated 16.09.2019 had issued the procedure of review/withdrawal/cancellation of consent to operate of non complying units under Water Act, 1974 and Air Act, 1981.

Whereas, vide letter no. HSPCB/PLG/2020/1234-1259 dated 21.01.2020 all the Regional Officers of the Board were asked to follow provisions of Air Rules, 1983 and inspection policy of the Board regarding legal sampling as well as orders regarding prosecution action against defaulting units, issued from time to time

Whereas, following instructions were issued by Board vide letter no. HSPCB/PLG/2020/1171-1198 dated 18.06.2020 (i) That 15 days show cause notice shall be given to the unit, as per standard Performa of show cause notices circulated vide Head Office letter no. HSPCB/2018/2661-2682 dated 13.12.2018. In case, if there is any threat to environment, immediate closure action be taken as per orders dated 23.08.2005 and as amended vide order dated 19.03.2020 (ii) That 15 days time period to give the reply of show cause notice shall be counted from date of email sent to the unit as registered in the general

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details on the HROCMMS online portal of HSPCB (iii) It will be ensured that annexure if any to be sent with show cause notice shall be attached in the email with due care.

Whereas, Competent Authority in some cases has observed that the provisions of above said orders/directions is not being followed in letter and spirit by Regional Officers and resultantly, number of times the officer of the Board constraint to face awkward situations before legal forum i.e. Courts/Tribunals established by rule of law;

Whereas, the matter was examined in the officers meeting held on 03.06.2021, wherein it has been decided to issue consolidated directions.

Therefore, in view of above and in super-session of relevant clause of this office orders endst. no. HSPCB/PLG/2018/2599 dated 05.12.2018, orders endst. no. HSPCB/PLG/2018/1074-1100 dated 22.05.2018, letter no. HSPCB/PLG/2020/1234-1259 dated 21.01.2020, and letter no. HSPCB/PLG/2020/1171-1198 dated 18.06.2020, it is hereby ordered that;

- i. Regional Officers shall follow provisions of Water Rules, 1978 and Air Rules, 1983 and inspection policy of the Board issued vide order dated 24.02.2016 (as amended thereof). Further, the inspections and sampling of the units covered under consent management of the Board and units operating without obtaining mandatory consent of the Board shall be carried out strictly as per the provisions of Water Act, 1974, Air Act, 1981 and inspection policy of the Board.
- ii. The inspecting officer shall fill up all columns of inspection report and sampling Performa with specific and relevant details and shall also indicate the longitude and latitude of unit upto eight decimal points in inspection report and sampling Performa, while conducting inspection. Further, the inspecting Officer shall prepare presence certificate and issue notice of intention alongwith all required sampling Performas as per Section 21 of the Water Act/Section 26 of the Air Act and/or Water Rules/Air Rules/policies of the Board. All Regional Officers shall ensure that all columns of inspection report and sampling Performa are filled up properly.
- iii. Regional Officer shall issue the show cause notice of 15 days to the unit on standard Performa of show cause notices circulated by Head Office vide Head Office letter no. HSPCB/2018/2661-2682 dated 13.12.2018. In show cause notice, Regional Officer shall clearly indicate the deficiencies and/or observations in consonance with the inspection report as well as the record pertaining to the unit. In case, if there is any threat to environment, immediate action is required to be taken as per orders dated 23.08.2005 and as amended vide order dated 19.03.2020, subject to clearly mentioning the reasons therein, in the well reasoned speaking order.
- iv. In future, Regional Officers shall not issue more than one show cause notice along with copy to Head Office to the defaulting units, without acting upon the first show cause notice or providing detailed reason for failure of any action upon the first show cause notice. Further, Regional officer shall ensure to take up all the deficiencies in the Show Cause Notice rather than to issue separate Show Cause Notice for several deficiencies.
- v. Regional Officers shall serve show cause notices upon the unit through registered post with AD and through email, at the email address registered in the general details on the HROCMMS online portal of HSPCB. In case of failure to serve the Show Cause Notice through E-mail and registered post upon the unit, Regional Officer shall serve Show Cause Notice through special messenger and by pasting on gate/premises of unit.
- vi. The time period of 15 days for submission of reply of show cause notice shall be counted from date of email sent to the unit at email address registered in the general

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details on the HROCMMS online portal of HSPCB or date of receipt of registered post available on online portal of Department of Posts, Government of India or date of receipt obtained by hand by special messenger. In case there is holiday/ Sunday on the prefix and/or suffix day of issuing show cause notice and/or receipt of reply of show cause notice, then same shall not be taken in account for calculating number of days of show cause notice.

- vii. Regional Officers shall dispose of the show cause notice immediately after the expiry of period of show cause notice. In case any reply is submitted by the unit, then Regional Officer shall pass a speaking order in an annotated form by indicating the deficiencies/ observations conveyed through show cause notice and reply submitted by unit based on merits of the case regarding acceptance /rejection of same. In case reply not submitted by such units, then same shall also be mentioned in speaking order. The Regional Officer shall send a copy of the speaking order to Head Office with recommendation. In case reply received after expiry of period of show cause notice, before or after sending recommendations for taking action then same shall also be disposed of by passing speaking order clearly indicating merits of case.
- viii. Regional Officers will send the proof of dispatch of show cause notice (Email/postal receipt/courier receipt/receipt by representative of unit) along with all the cases such as recommendation of closure/withdrawal of CTO/Prosecution/EC.

In case of failure to adhere to above said directions, it will be viewed seriously and disciplinary action will be initiated against defaulting officers as per HSPCB Service Regulations (as amended) without any further opportunity of reply on their lapses.

These orders shall come in to force with immediate effect.

Dated Panchkula, the
19th August, 2021

S. Narayanan, IFS
Member Secretary

Endst. No.

Date: 23/08/2021

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

1. All Branch In-charges in Head Office.
2. All Regional Officer in the field.
3. PS to Chairman.
4. PA to Member Secretary.
5. Branch In-charge-IT Cell for uploading the order on the website of the Board.

Signed by Bhupender Singh
Rinwa

Date: 23-08-2021 15:02:20

Reason: Approved

#ApprovedbyDesignation# (PLG)
For Member Secretary

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