

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

.....

**Appeal No. 132 of 2015
(M.A. No. 1188 of 2015)**

And

**Appeal No. 133 of 2015
(M.A. No. 1187 of 2015)**

And

**Appeal No. 134 of 2015
(M.A. No. 1186 of 2015)**

And

**Appeal No. 135 of 2015
(M.A. No. 1185 of 2015)**

And

**Appeal No. 136 of 2015
(M.A. No. 1184 of 2015)**

IN THE MATTER OF:

M/s Narayan Polishing
Through its Prop
Narain Dass
56/A-15, Rama Road,
Najafgarh Road Industrial Area, Delhi-15.

....Applicant

Versus

Delhi Pollution Control Committee
(Govt. of NCT of Delhi)
4th & 5th Floor, ISBT Building
Kashmere Gate,
Delhi-110006

.....Respondent

AND

M/s Coatwell India Pvt Ltd.
Through its Director Inder Paul
42, DLF Industrial Area,
Kirti Nager, Delhi-15.

....Applicant

Versus

Delhi Pollution Control Committee
(Govt. of NCT of Delhi)
4th & 5th Floor, ISBT Building
Kashmere Gate, Delhi-110006

.....Respondent

AND

M/s Sahi Electroplaters P Ltd.,
Through its Director Jitender Singh
Plot No. 54/D-12, Rama Road,
Najafgarh Road Industrial Area, Delhi-15.

....Applicant

Versus

Delhi Pollution Control Committee
(Govt. of NCT of Delhi)
4th & 5th Floor, ISBT Building
Kashmere Gate,
Delhi-110006

.....Respondent

AND

M/s Singh Sons Electroplating Works,
Through Its Prop.
S. Parvinder Singh Sahi
70, Rama Road,
Najafgarh Road Industrial Area, Delhi-15.

....Applicant

Versus

Delhi Pollution Control Committee
(Govt. of NCT of Delhi)
4th & 5th Floor, ISBT Building
Kashmere Gate, Delhi-110006

.....Respondent

AND

M/s Accumet Engineers,
Through its Partner
Vinod Kumar,
62, Najafgarh Road Industrial Area, Delhi-15

....Applicant

Versus

Delhi Pollution Control Committee
(Govt. of NCT of Delhi)
4th & 5th Floor, ISBT Building
Kashmere Gate, Delhi-110006

.....Respondent

COUNSEL FOR APPLICANT:

None

COUNSEL FOR RESPONDENTS:

Mr. Sanjay Ralli, Adv., Mr. Deeparkan and Mr. Dinesh Jindal, LO
(DPCC)

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)

Hon'ble Dr. Devendra Kumar Agrawal (Expert Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Reserved on: 9th November, 2015

Pronounced on: 10th December, 2015

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this common order we will dispose of all the above appeals as they raise common question of law and on facts based upon somewhat similar grounds.

2. For the purpose of brevity we do not consider it necessary to refer to the facts of each case giving rise to the present appeal, it would be sufficient to refer to the facts of Appeal no. 135 of 2015 filed by M/s Singh Sons Electroplating works. The appellant is a small scale industry carrying out job work of Electro Plating at Plot no. 70, Rama Road, Najafgarh Road Industrial Area, Delhi-15. The

unit is located on a 300 Sq. Meter area with 65 Kilo watt power load. The applicant states that it used about 2 kilo litre water per day and 4 persons are employed. The appellant become a member of the Najafgarh road and Moti Nagar Industrial Area CETP Society in 2002 and paid the requisite charges. The CETP Society paid a sum of one crore, one lakh, sixty four thousand, eight hundred and thirty four rupees and eighty one paise to DSIIDC for construction of CETP which was not constructed and the money was also not returned. The appellant applied for obtaining the consent of the Board under the Water Prevention of Pollution Act, 1974 (for short 'Water Act') and Air Prevention and Control of Pollution Act, 1981 (for short 'Air Act'). The appellant had applied for obtaining the consent of the Board to operate which was neither granted nor denied. However according to the appellant consent has been granted and was valid up to 24th July, 2008 and thereafter.

3. The appellant has not been granted specific consent and in fact for major part of the period the appellant has not even applied for obtaining the consent of the Board. On 3rd August, 2004, Delhi Pollution Control Committee (for short 'DPCC') had given authorization to the appellant for storage of the hazardous waste which was valid for a period of five years and then the appellant had applied for the renewal after the lapse of six years on 23rd September, 2015. The appellant unit has factory license certificate under the Delhi Municipal Corporation Act, 1957 for carrying on

Electroplating Job. With the approval of DPCC SEE (EDC) issued to following show cause notice to the appellant:

“F.No.DPCC/CMC-IV/471/2015/6193-94

Dated:13/08/15

Subject:- Show Cause Notice for closure u/s 33(A) of the Water (Prevention & Control of Pollution Act, 1974.

Whereas, Central Pollution Control Board is the State Board for all the Union Territories to exercise powers and perform functions under the Water (Prevention & Control of Pollution) Act, 1974.

And whereas, Central Pollution Control Board has delegated all its powers and functions under the Water (Prevention & Control of Pollution) Act, 1974 in respect of Union Territory of Delhi to Delhi Pollution Control Committee (DPCC) vide Notification No. S.O. 198 (E) dated 15.03.1991.

And whereas, it is a mandatory provision under u/s 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 that no person without the previous consent of the DPCC shall Establish or take any steps to establish any industry, operation or process or any treatment and disposal system an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land.

And whereas, as per the records of DPCC, you, **Ms. Singh Sons Electroplating Works, 70, Rama Road, Shivaji Marg, Najafgarh Road Industrial Area, Delhi-15** (hereinafter referred as Addressee), are engaged in the activity of Electroplating, Which is a water pollution activity.

And whereas, Hon'ble National Green Tribunal vide its Order dated 17th November, 2014 in original Application No. 196/2014 titled as “Krishna Kant Singh & Anr. Vs National Ganga River Basin Authority & Ors” has constituted three Committees namely Principal Committee, Implementation Committee and State Level Committee for compliance of its various directions from time to time including closure of the seriously polluting industries operation without consent from concerned SPCB/PCCs.

And whereas, 33 sectors of Seriously Polluting Industries (SPI) have been identified by the Implementation Committee and approved by the Principal Committee constituted by the Hon'ble National Green Tribunal in Original Application No. 196/2014 titled as Krishna Kant Singh & Anr. Vs National Ganga River Basin Authority & Ors.

And whereas, activity of the Addressee falls under the above said 33 Sectors of the Seriously Polluting Industries.

And whereas, as per the decision taken by the State Level Committee (SLC), constituted by the Hon'ble National Green Tribunal, in its 5th meeting held on 29.4.2015, none of the water polluting industry shall be allowed to operate,

especially 33 category of Seriously Polluting Industries in approved industrial areas/redevelopment areas.

Now therefore, in view of the directions of the Hon'ble National Green Tribunal and aforesaid and as decided by the Competent Authority in Delhi Pollution Control Committee in exercise of powers conferred upon Delhi Pollution Control Committee, to issue a Show Cause Notice u/s 33 (A) of Water Act, 1974:-

1. That you (the addressee) shall close your unit namely with immediately effect.
2. That the concerned authority in BSES Rajdhani Power Ltd shall be directed to disconnect electricity supply to the unit namely with immediate effect.
3. That the concerned authority in DJB shall be directed to disconnect the water supply connection to the unit namely with immediate effect.
4. The concerned Sub Divisional Magistrate shall be directed to take necessary action to ensure effective closure of the unit namely with immediate effect.

Hence, by way of this notice, you are hereby given an opportunity to submit your reply as to why the above said proposed directions should not be confirmed. Your reply, if any, should reach this office within 10 days from date of service of this notice, failing which the direction will be confirmed as proposed above, without an further reference in this regard.

This is being issued as per the approval of the Competent Authority in Delhi Pollution Control Committee.

(Mohd. Arif)

SEE (CDC), CMC-IV

M/s Singh Sons Electroplating Works,
70, Rama Road, Shivaji Marg,
Najafgarh Road Industrial Area,
Delhi-15

Copy to:

1.8. Master File.

(Sunil Kumar)
EE (CDC), CMC-IV"

4. On 13th August, 2015 the applicant received the above stated Show Cause Notice from the Board to which he submitted a reply by a letter dated 24th August, 2015. That reply is as follows:

“

Dated:24/08/2015

To,

The Sr. Environment Engineer,
Consent Management Cell-IV,
Delhi Pollution Control Committee,

4th Floor, ISBT Building,
Kashmere Gate, Delhi-6

Subject: Reply of show cause notice for Closure dated 13/08/2015

Sir,

This has reference to your letter DPCC/CMC-IV/471/2015/6193-94 dated 13/08/2015 regarding that no person without the previous Consent of the DPCC shall Establish or take any steps to establish any industry, operation or process or any treatment and disposal system an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land.

This is to inform you that I have applied Consent in year 2005 along with the authorization of Hazardous Waste and you have issued the same Vide Certificate No. O-002702 dated 16/05/2006 and valid upto 24/07/2008. I have again applied Consent for Renewal Vide ID No. 26666 dated 23/07/2008 but you have not given any response and unfortunately I have also forgotten to apply the same for the further, but now I have received your letter on 13.08.2015 and I have submitted Bank draft of Rs. 22,800/- in the favour Of Jamia Millia Islamia for the fresh Adequacy report (Copy Enclosed) and the Bank draft of Water Testing/Air testing also deposited in the DPCC.

That the application for Consent for Renewal is under process and will be applied within in 2-3 days.

So, I request you that kindly withdraw the proposed directions immediately because we are law abiding citizen and operation our Effluent Treatment Plant on regularly and discharging the water only after the treatment.

Thanking You

Yours Sincerely”

5. The Officers of the DPCC inspected the unit on 25th August, 2015 and found that ETP was working and meeting with the standards. However, vide order dated 18th September, 2015 the DPCC issued direction of closure in alleged misuse of power under Section 33 (A) of the Water Act. The order read as under:

"F.No.DPCC/CMC-IV/2015/7049-53

Dated:18/9/15

Subject:- Direction u/s 33(A) of the Water (Prevention & Control of Pollution) Act, 1974 and u/s 31(A) of the Air (Prevention & Control of Pollution) Act, 1981 & u/s 5 of Environment (Protection) Act, 1986 as amended to date.

Whereas, Central Pollution Control Board is the State Board for all the Union Territories to exercise powers and perform functions under the Water (Prevention & Control of Pollution) Act, 1974.

And whereas, Central Pollution Control Board has delegated all its powers and functions under the Water (Prevention & Control of Pollution) Act, 1974 in respect of Union Territory of Delhi to Delhi Pollution Control Committee (DPCC) vide Notification No. S.O. 198 (E) dated 15.03.1991.

And whereas, it is a mandatory provision under u/s 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 that no person without the previous consent of the DPCC shall Establish or take any steps to establish any industry, operation or process or any treatment and disposal system an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land.

And whereas, under rule 5 of the Hazardous Waste (Management, Handling and Transboundary) Rules, 2008 as amended to date, every occupier handling, or recycle hazardous waste has to obtain authorization for State Pollution Control Board or Committee (DPCC in case of delhi)

as per the records of DPCC, you, **Ms. Singh Sons Electroplating Works, 70, Rama Road, Shivaji Marg, Najafgarh Road Industrial Area, Delhi-15** (hereinafter referred as Addressee), are engaged in the activity of Electroplating, Which is a water pollution activity.

And whereas, Hon'ble National Green Tribunal vide its Order dated 17th November, 2014 in original Application No. 196/2014 titled as "Krishna Kant Singh & Anr. Vs National Ganga River Basin Authority & Ors" has constituted three Committees namely Principal Committee, Implementation Committee and State Level Committee for compliance of its various directions from time to time including closure of the seriously polluting industries operation without consent from concerned SPCB/PCCs.

And whereas, 33 sectors of Seriously Polluting Industries (SPI) have been identified by the Implementation Committee and approved by the Principal Committee constituted by the Hon'ble National Green Tribunal in Original Application No. 196/2014 titled as Krishna Kant Singh & Anr. Vs National Ganga River Basin Authority & Ors.

And whereas, activity of the Addressee falls under the above said 33 Sectors of the Seriously Polluting Industries.

And whereas, as per the decision taken by the State Level Committee (SLC), constituted by the Hon'ble National Green Tribunal, in its 5th meeting held on 29.4.2015, none of the water polluting industry shall be allowed to operate, especially 33 category of Seriously Polluting Industries in approved industrial areas/redevelopment areas.

And whereas, Rama Road, Najafgarh Road Industrial Area do not have Common Effluent Treatment Plant (CEPT) to treat the waste water generated from the said Industrial Area and therefore in view of the mentioned decisions taken by State Level Committee (SLC), your unit is to be closed down.

And whereas, a Show Cause Notice was sent to you (the Addressee) on 13.08.2015 as the activity of your unit falls under the category of Seriously Polluting unit (SPI).

And whereas, you (the Addressee) have submitted the reply on 24.08.2015 and the same has been considered by the Competent Authority.

And whereas, an inspection of your unit was conducted by CPCC officials on 25.08.2015 and during inspection it was observed that the activity of your unit falls under the category of Seriously Polluting unit (SPI).

And whereas, Competent Authority in Delhi Pollution Control Committee has decided to issue Closure Directions of u/s 33(A) Water (Prevention & Control of Pollution) Act, 1974 and u/s 31(A) of the Air (Prevention & Control of Pollution) Act, 1981 & u/s 5 of Environment (Protection) Act, 1986, in view of the decision taken by the State Level Committee (SLC) in the meeting held on 29.04.2015.

Now therefore, in view of the directions of the Hon'ble National Green Tribunal and aforesaid and as decided by the Competent Authority in Delhi Pollution Control Committee in exercise of powers conferred upon Delhi Pollution Control Committee U/S 33(A) of the Water (Prevention & Control of Pollution) Act, 1974 and u/s 31(A) of the Air (Prevention & Control of Pollution) Act, 1981 & u/s 5 of Environment (Protection) Act, 1986, as amended to date, following directions are issued:-

1. That you (the addressee) shall close your unit namely with immediately effect.
2. That the concerned authority in BSES Rajdhani Power Ltd shall be directed to disconnect electricity supply to the unit namely with immediate effect.
3. That the concerned authority in DJB shall be directed to disconnect the water supply connection to the unit namely with immediate effect.
4. The concerned Sub Divisional Magistrate shall be directed to take necessary action to ensure effective closure of the unit namely with immediate effect.

Non compliance of the above mentioned directions attracts penal action under the provisions of said Water Act, 1974 besides action with respect to non compliance of the aforementioned orders of Hon'ble National Green Tribunal

This is being issued as per the approval of the Competent Authority in Delhi Pollution Control Committee.

Satender Kumar
SEE (CDC), CMC-IV

M/s Singh Sons Electroplating Works,

70, Rama Road, Shivaji Marg,
Najafgarh Road Industrial Area,
Delhi-15

Copy to:

- 1 The Member (Water), Delhi Jal Board, Varunalaya Phase -II, Jhandewalan, New Delhi-110055: to disconnect the water supply to the unit of the Addressee with immediate effect and send the compliance report within 15 days.
- 2 The Chief Engineer, Tata Power Delhi Distribution Ltd., Hudson Lines, Kingsway Camp, Delhi-110009: to disconnect the electricity supply to the unit of the Addressee with immediate effect and send the compliance report within 15 days.
- 3 The SDM (Patel Nagar), Old Middle School Building Complex, Lawrence Road Rampura, Delhi-110035: to ensure the effective closure to the unit of the Addressee with immediate effect and send the compliance report within 15 days.
- 4 Master File.

(Sunil Kumar)
EE (CDC), CMC-IV”

6. Aggrieved from the above order the appellant has filed the present appeal on the ground that the appellant was not provided proper hearing in accordance with law by the DPCC. Further it is stated that the Order is a non-speaking one which has been passed without proper application of mind and is arbitrary. Further, the contention is also that the procedure prescribed under the Rules in relation to passing of the order has not been followed and on the inspection conducted by the officers of the DPCC, it is shown that ETP was working and the industry was non-polluting. The applications for grant of consent was pending before the DPCC and

the case of the appellant was not covered under the orders passed by the Tribunal dated 17th November, 2014 in the case of *Krishan Kant Singh & Anr v. National Ganga River Basin Authority & Ors.* in O.A. No. 196 of 2014.

7. The Learned Counsel appearing for the appellant relied upon the order of the Tribunal dated 29th September, 2015 passed in appeal no. 115 of 2015 and other connected appeals in the case of *Depak Kapoor v. Union of India & Ors* which squarely applies to the present case.

8. Before we deal with the merit or otherwise of the contentions raised by the learned counsel appearing for the parties in these cases, we may notice that in the connected matters the industries are carrying on the business of Electroplating or chroming etc. They are also located in the industrial area of Najafgarh, and some of them had obtained the consent to operate which is valid while some like the appellant in Appeal No. 135 of 2015, do not have consent to operate but there applications are stated to be pending before the Board. Therefore in all the cases, the Board had issued Show Cause Notice and then has passed the order for closure dated 18th September, 2015.

9. From the bare reading of the order dated 18th September, 2015 it is evident that the contents of the reply given by the appellant dated 24th August, 2015 have not been addressed. Furthermore, it is stated that the officials of the DPCC had inspected the said unit

on 25th August, 2015 and it was observed that unit falls under the seriously polluting unit. This order also does not meet the averments of the appellant that on inspection the ETP was found to be functional and the industry was found to be non-polluting. The order of closure is the ultimate power vested in the DPCC and it is expected of the authorities to pass a proper order with due reasons and consider the various pleas raised in the replies or otherwise by the appellant. The appellant is operating his unit obviously even without consent of the Board at this stage. Even his authorization for storage of Hazardous waste has expired. However the appellant has moved the application for obtaining of the consent as well as for storage of hazardous waste which are stated to be pending before the Board.

10. The appellant has placed on record the documents which show that the appellant is not in possession of consent to operate or authorization for storage of hazardous waste as of today. Passing a direction of closure under Section 33 (A) of the Water Act is an order of very serious consequence. In fact, it amounts to civil death of a unit. The order has to be passed strictly in compliance with the procedure prescribed under Section 33(A) of the Water Act. The procedure prescribed under Rule 34 of the Water (Prevention and Control of Pollution) Rules 1975 has to be adhered to. The procedure prescribed requires service of the copy of the proposed direction and an opportunity of not less than 15 days from the date of service of a notice to be provided from the date of the objection

and these objections would be dealt with as per procedure provided under sub rules (3) and (5) of the Rules, opportunity of being heard has to be provided even to occupier and after considering the objections, the order containing directions has to be passed. This is a mandatory procedure and in any case the Principles of Natural Justice are to be complied with. Person must be provided an opportunity before any adverse order could be passed against him. There should be application of mind, that is, the authority must deal with the objections raised by the affected party and then an order which is reasoned, should be passed. The impugned orders suffer from basic lacuna of recording of reasons and proper application of mind. If the industry is a seriously polluting industry then it is for the Board to explain as to why the industry was permitted to operate for all this time despite the fact that it did not have consent to operate. It is undisputed that the present case is squarely covered by the order of the Tribunal passed in the case of *Deepak Kapoor (Supra)*. There it was found that non consideration of the grounds raised by the appellant and orders passed without any inspection could not be sustained by the Tribunal. Following the observation stated in that order we find that in present cases also similar consideration exists. The DPCC should have passed proper and reasoned order in exercise of its power under Section 33 (A) of Water Act after strictly following the procedure. In the present cases both these ingredients lack compliance.

11. Another aspect that we would consider in the present case is that the learned counsel appearing for the DPCC submitted that in furtherance to the order of the Tribunal dated 29th September, 2015 passed in the case of *Deepak Kapoor (Supra)* DPCC has constituted a Committee and the Committee has now taken a decision which shall be applied to these industries also in accordance with law. It is submitted that the industries which are not connected to any CETP as well as the industries which have their own plant would be considered on their respective merit.

12. In view of the above discussion we pass the following directions:

- a) The order dated 18th September, 2015 would be kept in abeyance and the same shall be treated as Show Cause Notice. The DPCC, if it considers it appropriate can even provide further grounds or documents in compliance with Section 33 (A) of the Water Act. To this appellant industries can submit their replies within 2 weeks upon receipt thereof. And if DPCC considers it appropriate it may also provide personal hearing to the industries and conduct inspection of the premise if not already conducted.
- b) DPCC would examine the matters in relation to the discharge of trade effluent in terms of content, quality and analysis as well as in regard to storage of Hazardous

waste. It would be entitled to pass the order in accordance with law within three weeks thereafter. In other words the entire process should be completed within six weeks from the date of pronouncement of this order and till that time these industries, since admittedly are operational as of today, would be permitted to operate.

- c) In the event of the order of DPCC being adverse to the appellants they would be at liberty to challenge the same. However, the order of closure if passed pursuant to inspection and/or after being satisfied that the unit is polluting, then appellant units would be liable to be closed.

13. For the reasons stated in the application which is supported by an affidavit we condone the delay of 18 days in filing of these appeals. Consequently the M.A. No. 1188 of 2015, M.A. No. 1187 of 2015, M.A. No. 1186 of 2015, M.A. No. 1185 of 2015, and M.A. No. 1184 of 2015 are allowed. We leave it open as to if the industry is liable to pay any compensation for the period when it was polluting and operating without approval. Issue notice to industry on a separate file returnable and the registry will maintain a separate file for it.

14. We dispose of these matters with the above directions and there shall be no order as to cost.

Justice Swatanter Kumar
Chairperson

Justice M.S. Nambiar
Judicial Member

Dr. D.K. Agrawal
Expert Member

Ranjan Chatterjee
Expert Member

New Delhi
10th December, 2015

NGT