

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

Original Application No.30/2018 (CZ)

IN THE MATTER OF:

Central Pollution Control Board,
Central Region, Bhopal

Applicant(s)

Versus

The Director M/s Madhya Bharat
Phosphate Pvt. Ltd

Respondent(s)

COUNSEL OF APPLICANT:

Mr. Saurabh Rajpal, Adv

COUNSEL OF RESPONDENTS:

Mr. Shoeb Hasan Khan, Adv
Mr. Om Shankar Shrivastava, Adv
for Mr. Arvind Soni, Adv

PRESENT:

HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER

HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

**Reserved on: 24th August, 2021
Pronounced & uploaded on: 07th September, 2021**

JUDGEMENT

1. The issues raised in this application are non-compliance of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. Brief facts giving rise to the present application is that the Respondent No.1 is the defaulting industry against which the present application is filed. The Respondent Nos. 2, 3 & 4 are entrusted the respective duties under E (P) Act, 1986 as well as Air (1981) & Water (1974) Acts .The Fertilizer units are recognized as one of the 17 categories of highly polluting industries which have been discharging environmental pollutants directly or indirectly into the ambient water and air having potential threat to cause a verse effects on the water and air quality, if the

pollution control measures are not taken. CPCB issued direction under section 18 (1) (b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 was issued on February 05, 2014 to all the State Pollution Control Boards Committees (PCCs) for installation of (SPCBs)/ Pollution Control online emission monitoring system in all 17 category of highly polluting industries including Fertilizer industries.

2. In non-compliance of the CPCB's aforesaid directions dated February 05, 2014 by respondent unit CPCB issued show cause direction dated July 24, 2015 under section 5 of the Environment (Protection) Act, 1986 to respondent unit for compliance of the following:

1. The unit shall submit evidence regarding status of online effluent monitoring systems.
2. That Unit shall submit the status on connectivity for submission of online 24x7 monitoring data to SPCBs/PCCs and CPCB.
3. That unit shall submit the details as per Annexure-I through
 - (a) E-mail id- cems.cpcb@nic.in
 - (b) Uploading the data on the link provided on CPCB Website (www.cocbnic.in); and
 - (c) By speed post- To the Member Secretary, Central pollution Control Board.

3. Vide this show cause direction dated July 24, 2015, the CPCB issued show cause notice to respondent unit as to why the unit should not be closed down if, the unit has not complied fully with the directions issued w.r.t. installation of online effluent and emission monitoring system to be done by June 30, 2015. Further it was directed to submit documentary evidence regarding status of installation and connectivity.

4. Respondent unit vide Email dated April 22, 2016 provided the URL, User ID and Password of Online Monitoring System to Central Pollution Control Board

5. A team of officers from the Regional Directorate, central Pollution control Board, Bhopal inspected the respondent unit on April 26, 27 based on SMS alerts w.r.t Online Continuous Effluent Monitoring

System during the period of March 15, 2017 to April 15, 2017 to assess the compliance of the existing pollution control measures.

Following non compliances were observed during inspection:

- (i) The platform of the SSP stack for monitoring of source emission was found broken & unit did not provide port hole at GSSP stack for the purpose of legal sampling of stack emissions.
- (ii) The housekeeping of the unit near GSSP plant was found unsatisfactory & there was no cemented road inside the plant premises near finished goods storage yard area and near scrubber area.
- (iii) The Air & Water consents of the unit were valid up to 28/02/2017 and the unit was operating without the valid air and water consents.
- (iv) The unit had not installed online monitoring system for fluoride at SSP stack & online continuous emission monitoring system data of the unit was not being transmitted to CPCB.
- (v) The unit had not installed web camera and flow meter & the unit had not provided the connectivity of the same with CPCB for online continuous effluent monitoring system.
- (vi) The unit had not installed online continuous emission monitoring system for GSSP plant stack.

6. On the basis of observations of inspection report of the unit, CPCB on May 25, 2017 issued closure direction under Section 5 of Environment (Protection) Act 1986 to the unit to close all manufacturing/production activity until it complies with the directions as specified therein. In the said closure directions, the unit was directed as follows:

- (i) The unit shall obtain Air and Water consents from Madhya Pradesh Pollution Control Board.
- (ii) The unit shall install Web Camera and flow meter and the unit shall ensure online connectivity of flow meter & web camera to Central Pollution Control Board for providing real time data on effluents.
- (iii) The unit shall provide port hole at GSSP stack for the purpose of legal sampling of stack emissions.
- (iv) The unit shall install online continuous emission monitoring system (OCEMS) for GSSP stack and the unit shall ensure online

connectivity of OCEMS of GSSP stack to Central Pollution Control Board for providing real time data.

- (v) The unit shall install online monitoring system for fluoride at SSP stack and shall ensure online connectivity of OCEMS of SSP plant stack to Central Pollution Control Board for providing real time data.
 - (vi) The unit shall repair the platform of the SSP stack for manual monitoring of source emission.
 - (vii) The unit shall improve the housekeeping of the unit near GSSP plant & the unit shall construct cemented road inside the plant premises near finished goods storage yard area and near scrubber area.
7. The respondent unit replied vide letter dated July 19, 2017 to the aforesaid closure direction and provided point wise compliance status of issued directions and enclosed documents and photographs as supporting evidence.
8. It has been verified by the IT division of the CPCB on August 01, 2017 that the respondent unit has provided the connectivity of the online monitoring system to the CPCB. The unit vide its letter dated August 08, 2017 denied the receipt of closure direction dated May 25, 2017 whereas, closure direction was delivered to the unit on June 05, 2017 as per India Post Track Record no. RD664042605IN.
9. The Unit has submitted an undertaking of August 08, 2017 that it has complied with all directions issued by CPCB and if plant is found non-compliant during verification by CPCB officials, the unit will accept to close down operations immediately and shall not operate till full compliance is achieved.
10. Revoke direction u/s 5 of Environment (Protection) Act, 1986 was issued to the unit dated August 22, 2017 wherein it was mentioned that the unit has stopped production w.e.f. July 08, 2017 not from 05.06.2017 which is the receiving date of closure direction issued by CPCB on 25.05.2017 with directing to close down operation with immediate effect which is non-compliance of the closure direction issued by Central Pollution Control Board under section 5 of the

Environment (Protection) Act, 1986 vide letter dated May 25,2017 for which action as per law shall be initiated separately.

11. This application has been made with the prayer to impose appropriate penalties and compliance of the closure direction in addition to the recovery of the environmental compensation as calculated and informed by the CPCB.
12. In reply thereof, the Respondent No.1 has submitted that a Corporate Insolvency resolution Process was initiated against the Respondent no. 1 and moratorium was imposed on the answering respondent company by the National Company Law Tribunal Ahmadabad on 09/09/2018, under the provisions contained in part II of the Insolvency Bankruptcy code 2016, thereafter resolution process was taken over by the resolution professional and the Committee of Creditors duly appointed by the adjudicating authority. During the resolution process and after the publication of Form G under section 25(2)(h) of the code of 2016, the resolution plan submitted by M/s Shree Pushkar Chemicals and Fertilizers limited, was found to be in conformity with the directions issued by the Hon'ble Supreme Court of India in the matter of Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors hence the same was admitted by the Committee of Creditors (CoC) of the Madhya Bharat Phosphate Limited and was approved by the adjudicating authority National Company Law Tribunal in CP (IB) 131/2018 vide its order dated 05.03.2021, by effect of the same M/s Madhya Bharat phosphate Limited became the fully owned subsidiary of M/s Shree Pushkar Chemical and fertilizers Limited.
13. Clause 10.4 of the Duly approved Resolution Plan of the National Company Law Tribunal states the follows:
...“10.4 INQUIRES INVESTIGATIONS ETC
All inquires, investigation whether civil or criminal, notices causes of actions, suits, claims, disputes, litigations, arbitration or others

judicial regulatory or administrative proceedings against, or in relations to, or in connection with the company or affairs of the company, pending or threatened, present or future (including without limitations, any investigation, action proceeding, prosecution, whether or civil or criminal, by the central bureau of investigation, the enforcement directorate or any other enforcement agency), in relation to any period prior to the effective date or arising on account of the acquisition of control by the Resolution Applicant over the company pursuant to this Resolution Plan shall be deemed to be withdrawn or dismissed by virtue of the order of the Hon'ble Adjudication Authority/NCLT approving this Resolution Plan and the Company or the Resolution Applicants shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto, by virtue of the order of the Hon'ble Adjudicating Authority/NCLT approving this Resolution Plan all new inquiries investigation, whether civil or criminal, notice, suits, claims, disputes, litigation, arbitration, or other judicial, regulatory or administrative proceeding will be deemed to be barred and will not be initiated or admitted against the Company in relation to any period prior to the acquisition of control by the Resolution Applicants over the Company or on accounts of the acquisition of control by the Resolution Applicants over the Company pursuant to this Resolution Plan”.

14. The National Company Law Tribunal has granted protection to M/s Shree Pushkar Chemical and fertilizers Limited against all the regulatory or administrative proceedings against, or in relation to; or in connection with the company or affairs of the company, pending or threatened, present or future in relation to any period prior to the effective date (05.03.2021) or arising on account of the acquisition of control by the Resolution Applicant over the company pursuant to the approved Resolution Plan shall be deemed to be withdrawn or dismissed by virtue of the order of the Hon'ble Adjudication

Authority/NCLT approving the Resolution Plan and the company or the resolution Applicants (M/s Shree Pushkar Chemical and fertilizers Limited) shall at no point of time be, directly or indirectly held responsible or liable in relation thereto, by virtue of the order of the Hon'ble Adjudicating Authority /NCLT approving the Resolution plan, it is pertinent to mention over here that the alleged violation in question is attributed by the petitioner for the period commencing 25.05.2017 and ending 08.07.2017 which is prior to the effective date of the resolution plan i.e., the NCLT final order dated 05.03.2017, hence the answering respondent no.1 cannot be made liable for the previously initiated proceeding against the Respondent no.1.

15. The Respondent No.1 vide its letter dated 19.07.2017 submitted its reply to the closure direction dated 25.05.2017 before the petitioner wherein the Respondent no.1 informed the petitioner that the violations as enumerated by the petitioner in the said letter has already been rectified and as impugned letter dated 25.05.2017 was received by the Respondent no.1 on 08.07.2017, the unit was closed from the 08th July, 2017. The petitioner, Central Pollution Control Board has prayed this Hon'ble Tribunal to impose an Environmental cost of Rs. 4,05,000/- based on the calculation sheet prepared by the petitioner along with the petition, it is submitted that the said umbrella calculation has been done without any scientific reasoning and also without according an opportunity of hearing to the respondent no.1 thereby violating the principle of natural justice.

16. It is pertinent to mention over here that the petitioner claims that the petitioner has calculated the above mentioned penal environmental cost based on the liberty granted by this Tribunal in its order dated 09.10.2017 issued in the matters of Original Applications 603-607/2017 (PB), it is further submitted that the said orders passed by this Tribunal were Directions in Personam and not Directions in Rem, hence the facts of those cases being different from that of the instant

case, the obiter dicta of the above mentioned cases is not applicable in the instant case. Hence the penal environmental calculation submitted by the petitioner may kindly be not considered by Tribunal.

17. Respondent No.3, Madhya Pradesh Pollution Control Board had submitted the reply as follows:

“It is stated that, the industry had applied on 22.02.2017 online in XGN software for obtaining the renewal of the consent granted under the water Act and Air Act. The application was under scrutiny at the level of the Regional officer. Queries were raised by the Regional officer and the application was accepted on 02.05.2017 and the inspection of the industry was carried out on 03.05.2017. While processing the consent application, the compliance of online monitoring system was also called from the industry and after satisfactory compliance of the same the renewal of the consent was granted.

It is stated that, the copy of the closure notice dated 24.07.2015 and closure direction dated 25.05.2017, were also marked to the MPPCB and after receiving copy of the closure direction, a letter was issued by the Member secretary, MPPCB to the concerned Regional officer for ensuring the compliance.

The closure directions dated 25.05.2017 were revoked by CPCB on 22.08.2017 after the shortcomings were rectified by the Respondent No. 1 to the satisfaction of CPCB. The Environmental compensation [EC] levied by CPCB on the Respondent No. 1 for continuing the operations from 25.05.2017 to 08.07.2017 shall be paid by the respondent No. 1 immediately.

That, the MPPCB has taken effective steps for implementing the directions issued by the CPCB on 05.02.2014 for the installation of online effluent quality and common emission monitoring systems, to help track the discharges of pollutants from 17 categories of highly polluting industries. The MPPCB had issued directions on 12.08.2014 to 121 such industries to provide a time bound action plan with bank guarantee in compliance of directions issued by CPCB.

In order to keep a close vigil and continuous surveillance on industries, the M.P Pollution control Board (MPPCB) has established an Environment Surveillance centre (ESC) at Bhopal. The ECS has been established as a pro active follow up action to monitor

directions issued by CPCB to the Board, for installation of online monitoring system by the industry and to transmit real-time data of CAAQMS, CEMS, CSEMS and, IP-PTZ Cameras.

It is pertinent to note that, as per the order dated 05.03.2020 passed by the Adjudicating Authority, National Company Law Tribunal, Indore Bench at Ahmedabad, the unit of the Respondent No. 1 M/s Madhya Bharat Phosphate Pvt. Ltd has been taken over by M/s. Shree Pushkar Chemicals and Fertilizers Limited.”

18. Respondent No.4, Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. Ltd. has submitted the reply as follows:

“That, it is humbly submitted that answering Respondent no.4 has not received any direction from the Applicant till date under aforesaid sections for the stoppage or regulation of supply of electricity to the defaulting industry i.e., the Respondent no.1.

That the Applicant has also not expressly mentioned any contention or enclosed any annexure against the Respondent no.4 in the original application which evidently proves the non-compliance of any direction by the answering Respondent regarding stoppage or regulation of supply of electricity of the defaulting Respondent no.1”

19. Learned Counsel for Madhya Pradesh Pollution Control Board has argued that the team of the Central Pollution Control Board inspected the unit of the Respondent No.1 on 26.04.2017 and it was observed that:

- (i) The platform of the SSP stacks for monitoring of source emission was broken and unit had not provided Port Hole at GSSP stack for the purpose of manual monitoring of stack emission.
- (ii) It was resolved that the Air & Water consent of the unit was valid up to 28.02.2017 and the unit was operating without the valid air and water consent.
- (iii) It was observed that the unit had not installed Online Monitoring system for fluoride at SSP Stack & online continuous emission monitoring system data of the unit is not being transmitted to the Applicant.
- (iv) It was resolved that the unit had not installed Web Camera and Flow Meter & had not provided the connectivity of the same with Applicant for online continuous effluent monitoring system.

- (v) It was observed that the unit had not installed online continuous emission monitoring system for GSSP plant stack.

20. In reply thereof, the learned counsel for the Respondent had submitted that the matter was pending before National Company Law Tribunal, Ahmadabad in the provisions contained in part II of Insolvency, Bankruptcy code 2016 and he was not given an opportunity of hearing before the Central Pollution Control Board and further that the Central Pollution Control Board had not communicated this fact to the National Company Law Tribunal, Ahmadabad for investigation and further proceedings for realization of any amount which was due. Thus, opportunity of hearing should be provided to the Respondent. It is further argued that in 2017, there was no parameter laid down by the CPCB for assessment of any environmental compensation thus the compensation as calculated by the CPCB is not according to the procedure.

21. In view of the above, we are of the view that the Respondent No.1 was not given due opportunity of hearing and matter should be referred back to the CPCB to proceed in accordance with law and dispose of the matter after giving an opportunity of hearing to the respondent No.1.

22. Accordingly, we direct the Central Pollution Control Board to issue a notice with regard to the facts as contained in the application and after submission of reply and after giving due opportunity of hearing to the Respondent, the matter should be decided afresh.

23. The Original Application No. 30 of 2018 is **disposed of** accordingly.

SHEO KUMAR SINGH
JUDICIAL MEMBER

ARUN KUMAR VERMA
EXPERT MEMBER