

Item No. 07

Court No. 1

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

(By Video Conferencing)

Original Application No. 287/2020  
(I.A. No. 10/2021)

(With report dated 03.03.2021)

Dastak N.G.O.

Applicant

Versus

Synochem Organics Pvt. Ltd. & Ors.

Respondent(s)

Date of hearing: 03.06.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Dr. S.S. Hooda, Advocate

Respondent: Mr. Anil Grover, Senior AAG with Mr. Rahul Khurana, Advocate  
for State of Haryana and HSPCB  
Ms. Sunita Bhardwaj, Advocate for MoEF&CC  
Mr. A.K. Prasad, Advocate for CGWA  
Mr. Sunil Chadha, Senior Advocate with Mr. Akshay Chadha,  
Advocate for R-6  
Mr. Pardeep Gupta, Advocate for R-1  
Mr. Shiv Mangal Sharma and Mr. Sourabh Rajpal, Advocate for R-3,5&7  
Mr. Ashu Jain, Advocate

**ORDER**

1. This application seeks quashing of the order of State of Haryana dated 10.11.2020 allowing manufacturers of formaldehyde, requiring prior Environmental Clearance (EC), to operate for six months without EC, subject to making application for EC within 60 days. The applicant submits that requirement of prior EC is mandatory. There is no jurisdiction with the State to exempt the same. Reference has been made to an order of this Tribunal dated 28.11.2019 in *O.A. No. 840/2019, Ayush Garg v. Union of India & Ors.* to the effect that consent to establish

to such establishments is liable to be removed. Accordingly, closure order was passed by the State PCB but thereafter the impugned order has been passed by the State of Haryana. It is further stated that the industries are using ground water of approximately 6 Lakhs litres per day without requisite permission of the Ground Water Authority. There is also non-compliance of Manufacture, Storage, and Import of Hazardous Chemicals Rules, 1989. No requisite safety measures have been allotted. There has been incidents of damage to the crops, soil and ground water for which no adequate compensation has been recovered. TDS of the water has been reduced to almost zero by use of Hydrochloric Acid (33%) and pH level has increased. Untreated effluents are dumped back into the ground water through reverse borewells. In the condensation process, excess steam is discharged, using chimney adding to the air pollution. There is no mechanism to check leaching of methanol from underground tanks. This is one of the causes of cancer. As per statistics, 39% of national deaths from cancer are taking place in the State of Haryana.

2. The matter last considered on 9.12.2020 and finding *prima-facie* merit in the case of the applicant, the contesting respondents were required to show cause why impugned order dated 10.11.2020 passed by the State of Haryana be not quashed. Operative of the part of the order is as follows:-

“1...xxx.....xxx.....xxx

2. We *prima facie* find the impugned order to be without jurisdiction. Requirement of prior environmental clearance cannot be dispensed with. This legal position has been recently reiterated in *Alembic Pharmaceuticals Ltd. v. Rohit Prajapati & Ors.*, 2020 SCC Online 347. Learned Counsel for Respondent Nos. 1 and 6 have put in appearance without notice and have relied upon specific condition in the Notification dated 14.09.2006 to the effect that prior EC is not required where such prior EC is obtained by the industrial area,

*where a unit is set up. There is no merit in the submission as there is nothing to show that such prior EC has been obtained by the industrial area in question.*

*3. Accordingly, let the contesting respondents show cause why the impugned order be not quashed by their response by email before the next date. The applicant may provide a set of papers and a copy of this order to all the contesting respondents and file an affidavit of service within one week.”*

3. Accordingly, the State of Haryana has filed an action taken report dated 03.03.2021 through the Secretary, Environment *inter-alia* stating as follows:-

*“3. That for the purpose of environmental protection certain restriction and prohibition on new projects and activities, or on the expansion or modernization of the existing project or activities based on their potential environmental impact were imposed vide S.O. 1533 dated 14.09.2006 by MoEF, GOI. under schedule to the aforementioned notification, the process of manufacturing of Formaldehyde is covered under provision 5(f) which requires prior Environmental Clearance (EC) from the competent authorities State Environment Impact Assessment Authority(SEIAA)/MoEF & CC, GOI, before establishment and operation of such units, besides other mandatory clearances as applicable.*

*4. That 15 formaldehyde units (list attached at Annexure — R/1) were issued consent to establish and consent to operate by Haryana State Pollution Control Board at different times which were later revoked by the HSPCB for violating provision 5(f) of schedule to EIA Notification 2006 on the ground that no prior environmental clearance was obtained before establishment and operation of these units.*

*5. That a representation was received from all Haryana formaldehyde manufacturing association, Yamunanagar dated 23.10.2020 addressed to Additional Chief Secretary to Govt. of Haryana department of Environment and Climate Change, Chandigarh requesting to allow such formaldehyde units to operate and give sufficient time reasonable to obtain the Environmental Clearance from MoEF & CC and SEIAA on the basis of parity that same decision was taken by State of Rajasthan in similar case (Annexure —R/2). The copy of order of Rajasthan State Pollution Control Board was annexed with aforementioned representation.*

*6. That keeping in view the fact that units were established with the requisite consent from Haryana State Pollution Control Board and were operating with the necessary pollution control measures, as prescribed by Board, along with the investment in plant and machinery incurred by the individual units in establishing their plants, possible stock of raw material used for production, the case was referred to Government of Haryana by Haryana State Pollution Control Board for granting interim relief to*

*these units for obtaining environmental clearance from the appropriate authority.*

*7. The units were granted interim relief on basis of the fact that notification dated 14.09.2006 is being re-drafted by MoEF & CC and the zero draft has been circulated to all the States and other Stake holders for comments. The finalization and publication of revised notification is likely to take some time and that window for accepting application seeking environmental clearance is not kept open at present by the MoEF & CC.*

*Further, it is to mention here specifically that from the facts and circumstances of the given case, it can easily be inferred that the industries were operating in good faith with valid CTE/CTOs granted by Haryana State Pollution Control Board. Alongside it was admitted by Haryana State Pollution Control Board that the units in question were posing any pollution hazards and that only procedural laps was the deficiency against these units.*

*8. That keeping in view all the aforementioned facts, Government of Haryana vide order No. 16/14/2020-3Env. dated 11.11.2020 (Annexure—R/3) decided to allow these units to continue their operation for a period of 6 months without invoking any legal action against the procedural laps occurred, with the condition that these units will apply for environmental clearance within a period of 60 days from the date of issuance of this communication.”*

4. Reply has also been filed on behalf of the contesting Respondents Nos. 3, 5 and 7 which is in identical terms. It is stated that the contesting respondents have now sought EC in violation category. It is also stated that Central Government has delegated powers to the Haryana Government vide Notification dated 10.02.1988 which enables the State to exempt units from seeking EC and thus order dated 10.11.2020 of the State of Haryana is valid. The point of requirement of EIA was never raised for about 9 years during which the private respondents have functioned which shows that the Authorities themselves were not aware about this requirement. The private respondents were merely given breathing time to comply with the law. The said units are not causing any pollution and even if prior EC is not

taken, Principle of Proportionalities applies as held in *Alembic Chemicals v Rohit Prajapati*<sup>1</sup>.

5. We have heard learned counsel for the parties and with their assistance perused the records.

6. While the period of operation of the impugned order is over, we have gone into the matter on merits in view of contest by the private respondents.

7. It is clear from the stand of the State itself that prior EC is required under EIA Notification dated 14.09.2006 (Entry 5(f) of the Schedule. Once it is so there is no justification to permit function of such units in violation of mandate of law. In *Alembic Chemicals v Rohit Prajapati & Ors.*, 2020 SCC Online 347, the Hon'ble Supreme Court has made it clear that prior EC requirement cannot be dispensed with. While it is true that having regard to the fact situation therein particularly grant of EC later, the units were not closed and instead were required to pay compensation for the period the units functioned without prior EC, it does not mean that in absence of prior EC the units can be allowed to function by paying compensation. We thus hold that without prior EC the units cannot be allowed to operate. The State has no power to exempt the requirement of prior EC or to allow the units to function without EC on payment of compensation. Same view has been taken in *O.A. No. 840/2019, Ayush Garg v. UOI & Ors.* which has been dealt with by a separate order today.

8. As regards the stand of the private respondents that the State has delegated power under section 3(3) of the Environment (Protection) Act,

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<sup>1</sup> 2020 SCC OnLine SC 347

which implies that the State could exempt EIA requirement, neither any such delegation is shown nor the State claims to have such power or to have exercised such power. A statement has been made on behalf of the private respondents as well as State that the units now stand closed. Learned Counsel for the private respondents also submitted that their units have been functioning in a bonafide manner without causing pollution. Though they did not have EC only for want of knowledge of such requirement, they had requisite consents to establish and operate which have been renewed from time to time. They wish to comply with law and have also applied for EC.

9. We are of the view that since prior EC is statutory mandate, the same must be complied. We have no doubt that the stand of the private respondents will be duly considered by the concerned regulatory authorities, including the MoEF&CC on merits and in accordance with law but till compliance of statutory mandate, the units cannot be allowed to function. For past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process.

The application is disposed of.

In view of order in the main matter, I.A. No. 10/2021 also stands disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

June 03, 2021  
Original Application No. 287/2020  
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