

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

**Appeal No. 31 of 2015, Appeal No. 32 of 2015, Appeal No. 33 of 2015,
Appeal No. 34 of 2015, Appeal No. 35 of 2015, Appeal No. 36 of 2015,
Appeal No. 37 of 2015, Appeal No. 38 of 2015 & Appeal No. 39 of 2015**

IN THE MATTER OF :

M/s Suncity Holding & Trading Company

Vs.

State of Rajasthan & Ors.

And

M/s Junawa Print

Vs.

State of Rajasthan & Ors.

And

M/s Bhawani Industries

Vs.

State of Rajasthan & Ors.

And

M/s Daulat Industries

Vs.

State of Rajasthan & Ors.

And

M/s J.M.D. Industries

Vs.

State of Rajasthan & Ors.

And

M/s Sona Textile

Vs.

State of Rajasthan & Ors.

And

M/s Krishna Garment

Vs.

State of Rajasthan & Ors.

And

M/s Kamdhenu Madeup & Garment

Vs.

State of Rajasthan & Ors.

And

M/s Ganpati Madeup & Garment

Vs.

State of Rajasthan & Ors.

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER
HON'BLE DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER**

**Present: Applicant: Respondent Nos. 1: Mr. Manish Sisodiya, Mr. Sherayansh Nath and
Mr. Lokendra Singh Kacchawa, Advs.**

	Date and Remarks	Orders of the Tribunal
	Item Nos. 12 to 20 July 30, 2015	<u>Appeal No. 31 of 2015, Appeal No. 32 of 2015, Appeal No. 33 of 2015, Appeal No. 34 of 2015, Appeal No. 35 of 2015, Appeal No. 36 of 2015, Appeal No. 37 of 2015, Appeal No. 38 of 2015 & Appeal No. 39 of 2015</u> Some of the Appeals appear to be barred by time. It

is conceded that the order was served on them only by 12th May, 2015 though the order id dated 29th April, 2015.

In the light of the above facts, Appeals are not barred by time.

We have heard the Learned counsel appearing for the parties. The challenge in all the appeal is against order dated 29th April, 2015 passed by the Rajasthan State Pollution Control Board (for short 'RSPCB') declining consent to operate to the Appellants herein. The consent have been refused to these Appellants- Units practically on common grounds. It would be useful to refer to the order dated 29th April, 2015 itself impugned in these Appeals. The order is reproduce as under:-

*"Plot No 15/16, Khasra No 467, Village- Dhinana Ki Dhani, Near Junao Ki Shani,
Pal, Tehsil: Jodhpur*

District: Jodhpur

Sub: Refusal of Consent to Operate application under provisions of Water (Prevention & Control of Pollution) Act, 1974.

Ref: Your application dated 20/05/2014 for Consent to Operate received on dated 28/08/2014.

Sir,

Apropos above, it is to inform you that applications for Consent to Operate under reference is hereby refused under the provisions of Section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 for the reasons that:

- 1. Earlier consent applications of the industry were refused and direction for closure was issued, vide letter dated 22.09.2011 as the industry was established/operated in non-conforming area, in disregard to Hon'ble High Court order dated 09.03.2004 and 11.04.2008.*
- 2. The industry has again filed application dated 20.05.2014 for consent to operate, which is not complete in all respect as the industry has not complied with direction issued vide Board's letter*

dated 22.09.2011 and has not submitted all the details/documents viz Land conversion letter, Bank Guarantee, CETP connectivity letter/documents conforming installation of adequate Effluent Treatment Plant (ETP) & Reverse Osmosis Plant (RO Plant), Valid DIC acknowledgement, C.A. certificate in prescribed format and CGWA permission etc.

3. The industry was inspected by officials of the State Board on 02.06.2014 and observed that:-

- (i) Industry is situated on Non-conforming area.*
- (ii) Industry has not installed good quality tamper proof electronic meter in compliance to Hon'ble NGT directions dated 01.05.2014.*
- (iii) Industry has not provided adequate effluent treatment plant looking to the discharge from installed machinery and Reverse Osmosis plant to achieve the zero discharge.*

4. Industry is not complying with Hon'ble NGT direction dated 01.05.2014 regarding installation of tamper proof electronic meter, deposition of Rs. 5.00 lacs and installation of adequate treatment facilities for treatment of waste water to achieve zero discharge."

It is commonly conceded before us by the Learned counsel appearing for the respective parties that the consent has been declined to all the Appellants in these Appeals practically on the same ground and for the same reasons.

The challenge raised before us against the impugned order *interalia* but primarily are on the following grounds:-

1. It violates the principle of natural justice.
2. The orders have been passed in an unfair way as much as the reference to the inspection report made, while passing the impugned order, are more than a year old and it failed to take note of the intervening events.

3. The Officials of the Board have not even verified the records available with them before passing the impugned orders.

4. The Appellants had by and large complied with the grounds mentioned and rectified the defect even before passing of the impugned orders.

Having heard the Learned counsel appearing for the parties, there is no violation of the principle of natural justice *per se*. However, there appear some merits in the contention raised on behalf of the Appellants in so far as the application of mind in relation to the grounds stated in the impugned orders, and particularly seen in the light of the records placed on record. Hence, it is difficult to sustain the orders refusing the consent. For instance it had been stated in paragraph 4 of the impugned order that the industry has not deposited a sum of Rs. 5 lakhs in terms of the directions of the Tribunal dated 01st May, 2014. This appears to be factually incorrect as the Appellants had deposited a sum of Rs. 5 Lakhs (in the Appeal No. 31 of 2015 on 14th December, 2014 the Appellant has placed on record the receipt thereof). Similarly in the inspection reports reference has been made that the Unit failed to provide ETP while according to the Appellants they have installed the ETP and it is functioning properly. According to the Appellants the electromagnetic meters have been installed on 27th May, 2015, after passing of the impugned order.

Another aspect of these Appeals is certain objections which had never been taken by the Board has also been

taken in the impugned order. They are with regard to the permission from CGWA, installation of Reverse Osmosis plant and adequate treatment facility to made it to a zero discharge Unit. It is not disputed before us that prior to the order dated 29th April, 2015 the Appellants – Units have been operating for more than 4 to 5 years without consent of the Board. According to the Appellant they have applied however the consent of the Board has been granted for one reason or other. The litigation between the parties were pending before the Hon'ble High Court.

The cumulative effect of the above discussions is that there should be proper application of mind by the Board upon inspection of the premises and the industry must be granted an opportunity to place on record the documents to show that they have complied with the directions issued by the Board or in the judgment dated 01st May, 2014.

The Units which have borewells in their premises ought to have obtained the permission from the CGWA and should also have authorization for dealing with the hazardous waste, if they are generating the same.

In the light of the above, we dispose of all these Appeals while keeping the order dated 29th April, 2015 in abeyance. However, we would not direct grant of status Quo ante.

The impugned orders will be treated as show cause notices and all the Appellants should file Reply before the Board within two weeks from today with complete documents and evidence to show that they have complied

with all the requirements of law, directions, consent order and objections raised in the impugned order.

Wherever it is not possible for the Appellant to obtain permission, before submission of the Application, they would annex the Applications for obtaining such permission/ authorization and provide proof to the Board thereof. The Board shall pass orders within two weeks thereafter in all the cases.

The obvious remedy available to the parties against the order that may be passed is kept open on all grounds including the grounds raised in the present Appeals.

With the above directions, Appeal No. 31 of 2015, Appeal No. 32 of 2015, Appeal No. 33 of 2015, Appeal No. 34 of 2015, Appeal No. 35 of 2015, Appeal No. 36 of 2015, Appeal No. 37 of 2015, Appeal No. 38 of 2015 & Appeal No. 39 of 2015 stand disposed of without any order as to costs.

.....,CP
(Swatanter Kumar)

.....,JM
(M.S. Nambiar)

.....,EM
(Dr. D.K. Agrawal)

.....,EM
(Prof. A.R. Yousuf)