

Item No. 03

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 298/2020

Vineet Nagar

Applicant

Versus

Central Ground Water Authority & Ors.

Respondent(s)

Date of hearing: 21.12.2021

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

Applicant: Mr. Harpreet Singh Popli, Advocate

Respondent(s): Mr. Divya Prakash Pande, Advocate for MoEF & CC  
Mr. Nidhesh Gupta, Senior Advocate with Mr. Tarun Gupta,  
Advocate for M/s Suchem Organics Pvt. Ltd. (R-15)  
Mr. Rachit Mittal, Advocate for M/s JRS Industries (R-31)

**ORDER**

1. Prayer in this application is for remedial action against illegal operation of industrial units of the private respondents in the States of Haryana, Rajasthan, UP and Punjab, manufacturing formaldehyde and its different resins (including melamine formaldehyde, urea formaldehyde and phenol formaldehyde) without requisite EC as per EIA Notification dated 14.09.2006.

2. The matter was earlier dealt with by this Tribunal vide order dated 03.06.2021. The Tribunal held that in view of EIA Notification dated 14.09.2006, prior EC was required for units falling under Entry 5 (f) of Schedule to the said Notification. The Tribunal followed order of the same

date in O.A. No. 287/2020, *Dastak N.G.O. v. Synochem Organics Pvt. Ltd.*

& Ors. as follows:-

*“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, 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.**”*

3. In view of above, the Tribunal directed as follows:-

*“ 3. The above principle has to be followed in all other States where such units are functioning without prior EC. In the present application grievance is also against similar units functioning in the States of Rajasthan, UP and Punjab or any other State, in addition to Haryana for which above order has been passed. This needs to be checked by concerned statutory authorities and remedial action taken, following due process of law.*

**4. Accordingly, we dispose of this application with a direction to MoEF&CC, CPCB and Chief Secretaries, SEIAAs, PCBs/PCCs of all States/UTs to ensure compliance of law, following due process. They may issue appropriate directions in the matter.”**

4. On appeal, the Hon’ble Supreme Court vide order dated 13.9.2021 in CA 5154/2021 and 5125/2021 set aside order of the Tribunal and remanded the matter after granting opportunity of hearing to the parties who were appellants before the Hon’ble Supreme Court. The operative part of the order is reproduced below:-

*“ We need not go into the question of whether or not environmental clearance is necessary. **The decision may be taken by the learned Tribunal in accordance with law after giving the appellants an opportunity of hearing. The appellants may file their submissions and documents, if any, on which they wish to rely before the learned Tribunal.***

*The judgment and order impugned is set aside. The matter is remitted back to the learned National Green Tribunal **for deciding the same in accordance with law after affording an opportunity of hearing to the appellants. The consequential orders shall also stand set aside. It is clarified that consequential orders are those orders which have been passed consequent to the impugned order of the learned Tribunal and any preexisting orders.***

5. Accordingly, vide order dated 18.10.2021, the Tribunal granted time for filing submissions/documents. Reply has been filed on 17.11.2021 by Suchem Organics Pvt. Ltd. (‘Suchem’) and also by M/s JRS Industries (JRS).

6. We have heard learned counsels for the parties. We proceed to deal with the cases of the two projects.

#### **SUCHEM**

7. Learned counsel for the applicant submits that EC is mandatory in view of Notification dated 14.09.2006. The said industrial units did not have requisite EC. Suchem had ‘consent to operate’ which expired in 2017 which has since been rejected on 28.06.2021 by the Rajasthan State PCB.

There were deficiencies in the operation of the unit on account of which show cause notice dated 13.07.2017 was issued to which no adequate reply was submitted. The unit was informed about the applicability of EC requirement on 28.07.2019. The unit applied for EC as mentioned in the reply of the unit. As per application for EC (Annexure A-3 to the reply of Suchem), the capacity is proposed to be enhanced from 1000 M.T per month to 2500 M.T per month. Even after knowing the requirement of grant of EC, the unit continued to operate. Renewal consent to operate was thus rejected on 28.06.2021 followed by order of closure dated 14.07.2021. The unit has filed NOC dated 09.06.1994 granted by the State PCB for implementation of Pollution Control measures for proposed plant to manufacture Formaldehyde at plot No. G-1-787-789 Ind. Area, Bhiwadi. The NOC does not mention the date of actual operation. The said document mentions as follows:-

*“.....industry will not commence production unless the satisfactory operation of the Pollution Control measures is done by the industry in presence of concerning Regional Officer and is duly certified by him before commencement of production.”*

8. In the Udyog Aadhaar Registration Certificate (Annexure A-2), date of commencement is mentioned as 16.02.1994 while in the application for EC of which acknowledgement dated 21.10.2019 is annexed as annexure A-3, the date of incorporation of the company itself is mentioned as 06.04.1994. EIA notification prior to 14.9.2006 is dated 27.1.1994. Even if notification dated 14.9.2006 did not apply, notification dated 27.1.1994 applied. In any case, after enhancement of capacity in 2019, EC is mandatory and has been sought by the PP itself. Till it is granted, the unit cannot function, in view of rejection of consent and order of closure, unless such orders are challenged at any appropriate forum. Closure of the said unit is not consequential to the order of this Tribunal. While order of the

Tribunal is mentioned, the same is not the sole basis. The PCB has held that EC is required and also consent has been rejected. In any case, this aspect has to be considered by the PCB and unless consent is given, the unit cannot function.

9. Learned counsel for MoEF&CC supported the stand of the Applicant to the effect that atleast after 2019 when capacity has been enhanced, EC is mandatory and till closure order is quashed and EC is granted, the unit cannot function.

10. Stand of learned counsel for Suchem is that date of NOC should be taken as commencement of manufacturing and as per understanding the PP, no EC was required. EC has already been applied for and there is no bar to grant of EC. Further, pending consideration, the unit should be allowed to function as held by Hon'ble Supreme Court in judgement dated 09.12.2021 in *Civil Appeal Nos. 7576-7577 of 2021, Electrosteel Steels Limited v. Union of India and ors.* Matters are pending before the Hon'ble Supreme Court on the same issue, arising out of the order of this Tribunal dated 03.06.2021 and stay is operating in favor of other similarly placed industrial units.

11. Learned Counsel for the applicant opposed the above submissions and reiterated prayer for direction of not allowing the unit to operate till compliance. He submitted that the judgement in *Electrosteel Steels Limited* does not help the PP. Legal position that prior EC is mandatory remains and observations relied are only in a fact situation different from the present matter. He referred to peculiar facts of the case noted in the said judgement that the unit had the EC and issue of requirement of EC on shifting to new site. Ex post facto EC was granted. The management was successor to earlier management under NCLT approved resolution plan.

Irregularities were of previous management. It was held in para 81 that principle in *Alembic Pharmaceuticals Ltd. vs. Rohit Prajapati and Ors.*, 2020 SCC OnLine SC 347 was unexceptional but distinguishable in peculiar facts where EC was already there but there was technical irregularity. Ex post facto EC had also been granted as interim measure. EIA had already been conducted. This factual position does not exist. Only similarity is that the PP in this case has applied for EC.

12. We have considered the rival submissions. We find that as far as Suchem is concerned, atleast from 2019 when capacity has been enhanced, EC is required. For the earlier period, it is for the State PCB to verify the factual position. If initially EC was not required, the State PCB may determine whether any process change or capacity enhancement took place after initial set up. On violations being established, action may be taken accordingly. It is not necessary to issue direction to stop the operation of the unit in view of expiry of consent in the year 2017, rejection to consent renewal, closure order and pendency of application for EC due to capacity enhancement. However, there cannot be any direction to allow operation of the unit till orders of the State PCB are challenged. As submitted by the applicant, closure is not a consequence of order of this Tribunal alone but on merits of the violations by the unit. The judgement in *Electrosteel Steels Limited*, supra, stands on different footing as submitted on behalf of the applicant, noted above in Para 11. In that case, EC had been granted earlier and the irregularity was held to be of technical nature and that too by previous management. On such peculiar facts, principle of law laid down in *Alembic supra* was distinguished. In the present case EC has never been granted. Accordingly, we direct that the State PCB may permit the unit to operate only if it complies with the law which requires EC and a valid consent. This order will also be subject to

any contra decision of the Hon'ble Supreme Court in pending matters. The matter of Suchem is disposed of accordingly.

**JRS**

13. The stand of M/s JRS is that it applied for 'consent to establish' on 23.08.2018 which was granted on 14.09.2018 but revoked on 13.08.2020. The unit applied for EC on 07.10.2020 which is pending. However, the State PCB has allowed operation on 13.11.2020 for six months with a condition that EC application should be filed but later, on 19.01.2021, 'consent to operate' was refused. It is orally stated by the PP that the unit has not started operation. Submission is that there is no case for demand of any compensation from the said unit for the past violations.

14. Since the Tribunal has merely asked the unit not to operate till compliance which order has to be reiterated. As regards past violations, the Tribunal has asked the State Board to verify the factual position before taking any action for the past violations. No further order is necessary. This order will also be subject to any contra decision of the Hon'ble Supreme Court in pending matters. The matter will stand disposed of accordingly.

15. It is made that all units manufacturing formaldehyde and its different resins (including melamine formaldehyde, urea formaldehyde and phenol formaldehyde) without requisite EC as per EIA Notification dated 14.09.2006 will be governed by the requirement of such EC. Respective State PCBs may take further action in accordance with law, subject to any contra order of Hon'ble Supreme Court.

OA is accordingly disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

December 21, 2021  
Original Application No. 298/2020  
AB