

M/S Rathi Special Steels Ltd vs Commission For Air Quality Management ... on 9 June, 2022

Item No. 01&02

(Court No. 3)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Appeal No. 29/2022
(Earlier Appeal No. 11/2022 (CZ)
(I.A. No. 150/2022)
(Caveat No. 01/2022)

WITH

Appeal No. 28/2022
(Earlier Appeal No. 04/2022 (CZ)

Rathi Special Steels Ltd.

Appellant

Versus

Commission, for Air Quality
Management in NCR & Ors.

Respondent(s)

Date of hearing: 09.06.2022

CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE PROF. A SENTHIL VEL, EXPERT MEMBER

Appellant(s): Mr. Raj Panwani, Senior Advocate, Mr. Sunil Nath, Mr.
Sandeep Mishra and Mr. Anand Shankar Jha, Advocates

Respondent(s): Dr. Abhishek Atrey, Advocate for R-1
Mr. Sandeep Singh, Advocate for RSPCB
Mr. Vaibhav Kandpal, Advocate for CAQM

ORDER

1. Both these appeals are interconnected and Shri Raj Panjwani, learned Senior Counsel appearing for the appellant has placed facts on Appeal No. 28/2022, Rathi Special Steels Ltd. vs. Commission, For Air Quality Management in NCR & Ors. stating that the Appeal no. 29/2022 is follow up and both the matters may be considered in the light of the facts stated in Appeal No. 28/2022.

2. This Appeal 28/2022 has been preferred against order dated 21.01.2022 passed by Commission for Air Quality Management in National Capital Region and Adjoining Areas (hereinafter referred to as 'Commission') exercising powers under "Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021" (in short 'Commission Act, 2021') and statutory directions issued by Commission under the provisions of the said Act.

3. Commission proceeded on the basis of an inspection report submitted by its raid team after making inspection of the premises of appellant on 17.01.2022 when raid team found violations of provisions of Air (Prevention and Control of Pollution) Act, 1981 as also directions issued by Commission under the 'Commission Act, 2021'. Commission passed closure order on 21.01.2022 where-against appellant preferred Appeal No. 04/2022(CZ), Rathi Special Steels Ltd. vs. Commission, For Air Quality Management in NCR & Ors. before NGT Central Zone, Bhopal. Main submission was violation of principles of natural justice. Bhopal Bench of this Tribunal passed order on 29.03.2022 directing appellant to appear before Commission and Commission was directed to give opportunity of hearing to the appellant and thereafter take decision in the light of submissions made by appellant. An interim order permitting unit operate was also passed.

4. Pursuant to above order passed by Bhopal Bench of this Tribunal, Commission gave opportunity of hearing to the appellant on two dates and thereafter passed order dated 05.05.2022 where-against Appeal No. 11/2022 was filed before Bhopal Bench of NGT. Both appeals were heard by Bhopal Bench on 20.05.2022 and it observed that issue raised relates to provisions made in respect of NCR Region therefore appeals be heard at PB and directed for placing appeals before Hon'ble Chairperson for transfer of appeals to PB for disposal. On transfer appeals are re-registered as 28/2022 and 29/2022.

5. Now coming back to the impugned order dated 05.05.2022 appealed in 29/2022, Commission broadly has found violation on the part of appellant with regard to functioning of unit without Environmental Clearance (EC) under EIA Notification, 2006; non-availability of Consent to Operate after expiry on 31.7.2022 and functioning of unit on the days of closure i.e. Thursday and Friday as also not operating unit on PNG/cleaner fuels as per the directions no. 49 issued by Commission in exercise of its powers under the 'Commission Act, 2021'.

6. Shri Raj Panjwani, learned Senior Counsel appearing for appellant has addressed Tribunal on merits of all the three issues stating that despite directions issued by Ministry of Environment, Forest and Climate Change (MoEF&CC) on 13.12.2010, there was a lot of confusion earlier which was clarified by the MoEF&CC by sending a letter to Rajasthan State Pollution Control Board (RSPCB) on 13.04.2022 and thereafter the appellant has submitted application dated 10.05.2022 for grant of EC which is pending. With regard to Consent to Operate, he submitted that application was submitted on 10.03.2021, about four months prior to expiry of Consent to Operate but, RSPCB did

not pass any order. Hence, appellant was under

the impression of deemed grant of consent for atleast to continue with operation of the industry till order is passed by RSPCB on the application submitted by appellant with regard to renewal of consent to operate. On the third question, he submitted that industry though had run on closure days, but appellant had paid compensation for such violations and therefore, extreme order of closure passed by the Commission is nothing but a civil death to the industry and it should not have been passed. Hence, impugned order is not valid in law. However, when questioned about final disposal of appeals today itself, after the arguments, learned Counsel also submitted that the arguments advanced by him cover the entire issues which he would have advanced at the final stage of arguments for assailing the impugned order, therefore appeals may be heard finally after a week and did not insist on IA filed for interim order.

7. Dr. Abhishek Atrey, learned Counsel appearing for Respondent No. 1 stated that he has already filed reply in Appeal No. 28/2022 and will file reply in Appeal No. 29/2022, if any, within a week. Both learned Counsels agreed that the matter itself may be heard finally on 17.06.2022.

8. In view of the above, we permit Respondent No. 1 to file its reply in Appeal No. 29/2022 within a week i.e., by 15.06.2022 and the appellant would have opportunity to file rejoinder by 17.06.2022. RSPCB may also file its reply, particularly on compliance with reference to environmental norms, use of cleaner fuel as per direction 49 of the Commission besides not granting consent and delayed action on account of whether requiring EC or not, within a week.

9. Since Respondents 1 and 2, both are represented through Counsels, who are present today, therefore, we do not find any necessity to serve notice to them.

Put up this matter for final disposal on 17.06.2022.

Sudhir Agarwal, JM Arun Kumar Tyagi, JM Prof. A. Senthil Vel, EM June 09, 2022 DV