

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

**M.A. No. 375 of 2014  
&  
Appeal No. 43 of 2014**

**M/s Hindustan Coca- Cola Beverages Pvt. Ltd.  
v/s  
U.P Pollution Control Board.**

**CORAM: HON'BLE MR. JUSTICE M. CHOKALINGAM, JUDICIAL MEMBER  
HON'BLE DR. A. A. DESHPANDE, EXPERT MEMBER**

**Present: Appellant: Mr. Rajiv Nayar, Sr. Adv. Ms. Ruby Singh Ahuja,  
Mr. Manu Aggarwal, Ms. Neha Gupta Adv.  
Respondent No. 1: Mr. Pradeep Mishra and Mr. Daleep Kr. Dhayani,  
Adv.  
Respondent No. 2: Mr. Prasouk Jain and Mr. B.V. Niren, Adv.**

<b>Date and Remarks</b>	<b>Orders of the Tribunal (Vacation Bench)</b>
<b>Item No. 2 June 20, 2014</b>	<p>The Counsel for the parties are present. On admission, notice was ordered to U.P.PCB which filed reply. Thereafter, the newly added party i.e. CGWA was added as a party and pursuant direction the reply is filed this day.</p> <p>This appeal challenges an order of closure of the Appellant unit Hindustan Coca-Cola Beverages Pvt. Ltd., Varanasi dated 06-06-2014 following a show cause notice on 23<sup>rd</sup> May, 2014.</p> <p>The contention put forth by the Learned Counsel for the Appellant and also the Respondents are considered and all the material placed is looked into.</p> <p>Learned Counsel for the Appellant, pressing for the interim relief of stay of the impugned order, would submit that the Appellant's industry was established in the year 1996 and 'Consent to Operate' was granted in 1999 wherefrom it has been operating continuously. While the matter stood thus, the Appellant made an application for expansion of the industry. While the same was pending, a</p>

show cause notice was issued by the U.P.PCB. On the receipt of the same on 29.05.2014 a reply was submitted on 5<sup>th</sup> June, 2014 wherein a personal hearing was also requested. Despite the same an order of closure came to be passed on 6<sup>th</sup> June, 2014. The Counsel would further add that the reply that was given for the show-cause notice was never considered nor an opportunity for personal hearing was given but the PCB was in haste to pass the order for closure on the very next day, thereby the direction was issued to the Appellant to close the existing industry also.

Pointing to the show cause notice the Counsel would submit that in the instant case the NOC from the CGWA was not necessary either for the existing industry or the proposed expansion but citing the NOC as a reason the Respondent U.P.PCB has acted arbitrarily and pass the order. And hence pending the enquiry of the Appeal the order of closure has got to be stayed and if not done the same would cause not only prejudice but also cause financial loss to the Appellant.

Countering the above contentions, the Learned Counsel for U.P.PCB would submit that the Appellant's industry after obtaining 'Consent to Establish' in 1996 and consent to operate in 1998 has been carrying on its operational activities from 1999 and the same has been revised subsequently but when the application was made for expansion an inspection was made and thereafter a direction was issued that without a obtaining NOC from CGWA the Appellant should not proceed with its operation. But flouting the same the Appellant was carrying on its activities and under such circumstances there arose the necessity for issuing a show cause on 23<sup>rd</sup> May, 2014 and a reply has also

been received from the Appellant on 5-06-2014. Only after considering the reply which was found not satisfactory the Respondent Board passed the order of closure which is in accordance with law and guidelines and hence the contentions put forth by the Appellant side have got to be rejected as meritless.

Learned Counsel for the newly added CGWA would submit that original guidelines in respect of NOC were issued in 1999 and subsequently revised in 2012. The industry of the Appellant has to be taken as a whole and if looked from that point of view the NOC form the CGWA is necessary both for existing and expansion and now the Application made by the Appellant is pending consideration and meeting is scheduled to take place on 21-07-2014 to take a decision and hence under such circumstances it is not fit case for getting interim stay of the order of closure of the Appellant industry.

The contention put forth by the learned counsel of either side were considered and the entire materials were looked into.

As stated above this appeal challenges a closure of Appellant's unit by an order dated 6<sup>th</sup> June, 2014. Admittedly, the Appellant's industry after obtaining 'Consent to Establish' and also the 'Consent to Operate' in the year 1998 and thus commenced its operation on 1<sup>st</sup> January, 1999. Thus it is not the case of the Respondents that either in establishment or in its operation the Appellant has committed any act in violation of law. Also not the case of the Respondents that there was any violation of any condition imposed by the Board.

While the matter stood thus, an application for expansion of the industry was made in May, 2012. Following the same an inspection in this respect was made by the Uttar Pradesh State Pollution Control Board. A direction

came to be issued by the UPPCB on 4<sup>th</sup> April, 2013 which reads as follows : -

*“Considering the aforesaid fact after enhancement of capacity of the industry. Its application dated 13<sup>th</sup> July, 2013 for consent to operate under Water Act, is rejected and as it is not conserving underground water in the premises and nearby area, not submitting the permission from Central Ground Water Authority and for non-compliance of other important conditions, it is directed that the industry should not do the work of expansion and not to operate on enhanced capacity and should operate only after obtaining consent as per rules from the Board on the earlier approved production capacity i.e. 600 bottles per minute.”*

Even the very reading of the abovesaid communication dated 4<sup>th</sup> October, 2013 by the UPPCB makes it very clear that the NOC should be obtained from the Central Ground Water Authority for expansion without which the industry should not do work of expansion and not to operate on enhanced capacity but could operate only after obtaining consent from the Board on the earlier approved production capacity i.e. 600 bottles per minute. It is also pertinent to point out that the Appellant's industry has also applied for renewal of the existing 'Consent to Operate' and the same was also granted by the UPPCB on 26<sup>th</sup> February, 2014 and the same is also in force. Only after the communication dated 4<sup>th</sup> October, 2013 the UPPCB had occasion to consider the application of the Appellant for grant to renewal to carry on the existing industry and thought it fit to grant renewal and accordingly granted the same on 26<sup>th</sup> February, 2014.

Under such circumstances, the contention put forth by the learned counsel for the UPPCB that even for the existing industry NOC from the Central Ground Water Authority has to be obtained and if not so the industry should be stopped cannot be countenanced.

In so far as the contentions put forth by the Central Ground Water Authority is concerned, the original guidelines in respect of the expansion of the industry came to be in operation in 1999 and same was revised from time to time and the same was finally revised in the year 2012. It is an admitted position that the application filed by the Appellant seeking NOC in respect of expansion is pending in the hands of the Central Ground Water Authority for more than one

year without being considered. An undue delay is noticed, however pendency of the application for consideration by itself will not clothe Appellant with any right to carry its activities in respect of expansion. But in so far as the industry which has also existed the Tribunal, is unable to notice any reason to stop the same from carrying on its operation with original capacity since no guideline were brought to the notice of the Tribunal which require NOC for the existing industry. The Appellant has made a prime facie case for stay of the impugned order only in respect of the existing industry. Under such circumstances pending the Appeal, the order of UPPCB has to be stayed only in respect of the operation of the Appellant's industry which has been manufacturing 600 bottles per minute and in other respect the order of closure is not disturbed. It is also made clear that pending consideration of the application by the Appellant by the Central Ground Water Authority the Appellant is restrained from doing any activity with regard to the expansion of the existing industry.

The UPPCB is also directed to monitor and supervise the production of the Appellant industry until further orders are passed.

List the matter on **5<sup>th</sup> August, 2014.**

....., JM  
(M. Chokalingam)

....., EM  
(A. A. Deshpande)