



(117)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM-13062-CWP-2024 in/and
CWP-18072-2024 (O&M)
Date of decision:- 14.08.2024

M/s Sharanpal Cold Storage

...Petitioner(s)

Versus

Punjab Pollution Control Board, Jalandhar and others

...Respondent(s)

CORAM: **HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE**
HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sarabjit Singh Cheema, Advocate,
for the petitioner.

Mr. Abhilaksh Gaind, Standing Counsel (PPCB),
Mr. Aman Kumar Sirswa, Advocate,
for respondents No. 1 to 3.

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SHEEL NAGU, C.J. (ORAL)

1. With the consent of learned counsel for the parties, the petition is taken up on board.
2. Learned counsel for the petitioner is heard on the question of admission as well as final disposal of the petition.
3. This petition has been filed by the owner of a cold-storage situated at village Macchipal, Tehsil and District Kapurthala, Punjab, against whom the impugned order dated 03.06.2024 (Annexure P-14) has been issued under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (in short the 'Water Act, 1974') and under Section 31A of the Air (Prevention and Control of Pollution Act), 1981 (in short the 'Air Act, 1981').



4. The reasons for passing the said impugned order are evident from reading of the directions issued therein which are as follows:-

“(i) That the industry shall stop operating all outlets & stop forthwith discharging any effluent/emissions from its premises.

(ii) That the industry shall not restart any process/plant unless all necessary water/air pollution control measures are taken and concentration of various pollutants conforms to the effluent/emissions standards laid down by the Board for such discharges.

(iii) That the industry shall not restart discharging pollutants until it obtains the consent to operate of the Board u/s 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 as amended in 1988 and u/s 21 of the Air (Prevention & Control of Pollution) Act, 1981 as amended in 1987.

(iv) That Punjab State Power Corporation Limited will be directed to disconnect the supply of electricity available to industry.”

5. From the pleadings of the petition as well as the tenor of the impugned order dated 03.06.2024, it is obvious that the effluents discharged are essentially liquid in nature and, therefore, primarily relate to the Water Act, 1974.

6. The impugned order also mentions the Air Act, 1981, since there was a complaint about the generator-set exhaust being operated without a canopy.

7. If the essentiality test is applied to the impugned order dated 03.06.2024, it is obvious and palpable that, considering the nature of effluents discharged by the cold-storage, it is essentially an order passed under Section 33A of the Water Act, 1974.

8. Undoubtedly, any order passed under Section 33A of the Water Act, 1974, is appealable before the National Green Tribunal under Section 33B(c).

9. Learned counsel for the petitioner has relied upon the decision of Apex Court in ***Tamil Nadu Pollution Control Board Vs Sterlite Industries (I)***



Ltd. and others, 2019 AIR (SC) 1074, wherein it was, *inter-alia*, laid down that if an order is conjointly passed by the Board under Section 33A of Water Act, 1974 as well as under Section 31A of Air Act, 1981, then no remedy against such an order is available except for filing a petition under Article 226 of Constitution of India, for the reason that the Air Act, 1981 does not prescribe any remedy against an order passed under Section 31A of Air Act, 1981.

10. There is no dispute as regards the law laid by the Apex Court in **Tamil Nadu Pollution Control Board's** case (supra). However, the very fact that the impugned order dated 03.06.2024 has already been held by this Court to be essentially an order passed under the Water Act, 1974, where the remedy under Section 33B(c) is available before the National Green Tribunal, the verdict of Apex Court in **Tamil Nadu Pollution Control Board's** (supra) is of no avail to the petitioner.

11. The present petition stands disposed of with liberty to the petitioner to avail the remedy under Section 33B(c) of the Water Act, 1974 by approaching the National Green Tribunal, where the petitioner is free to seek interim relief in accordance with law.

12. This Court hastens to add that no comments on merits of the claim of petitioner have been made and the National Green Tribunal is free to decide the matter either way.

(SHEEL NAGU)
CHIEF JUSTICE

(ANIL KSHETARPAL)
JUDGE

14.08.2024

Amodh Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No