

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

Original Application No. 67/2019
(I.A. No. 32/2019)
WITH
Original Application No. 138/2019
(I.A. No. 65/2019, I.A. No. 686/2019 &
I.A. No. 762/2019)

(With report dated 04.11.2019 & 03.01.2020)

Sumit Kumar

Applicant(s)

Versus

State of Himachal Pradesh & Ors.

Respondent(s)

WITH

Amarjeet Kumar

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 07.01.2020

CORAM: **HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON**
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER

For Applicant(s): Dr. Sandeep Singh, Mr. Vinay Pal, Advocates

For Respondent(s): Ms. Meenakshi Arora, Sr. Advocate with Mr. Sharat Kapoor and Mr. Shrey Kumar, Advocates
Mr.Alok Kr. Aggarwal, Advocate for R-11
Mr. Sanjay Kumar, Mr. Kapil Hooda, Advocates for HPSPCB
Mr. Rajkumar, Advocate for CPBB
Mr. Chetan Sharma, Sr. Advocate, Mr. Soumik Ghosal, Mr. Gaurav Singh Advocates

ORDER

1. This order will govern Original Application No. 67/2019 and Original Application No. 138/2019 as both the matters are inter-connected.

2. The issue for consideration is the steps to be taken for controlling the use of Pet-coke and Furnace oil as fuel. The matter was dealt with vide order dated 28.03.2019 in the light of the Report of the Central Pollution Control Board (CPCB) dated 15.02.2019 to the effect that use of Pet coke and Furnace oil can be allowed only in industries/processes either as feed stock (Calcined Pet-Coke (CPC) units, Aluminum industries) or where they get absorbed along with product in manufacturing process (cement, Lime Kiln, calcium carbide industries). Raw Petroleum Coke (RPC) in CPC units can be allowed with condition of 90% recovery of SO₂ emission. The objection to the use of Pet coke and Furnace oil, which has already been banned in certain States, is causing of huge emission of SO₂ and other pollutants. The pollution load of SO₂ is four times higher than Low Sulphur Heavy Stock (LSHS) and LDO.

3. Vide order dated 04.07.2019, the matter was considered further by this Tribunal in the light of report of the CPCB dated 28.06.2019 to the effect that use and sale of Pet coke and Furnace oil was banned in Delhi and NCR States with certain exceptions and the Ministry was consulting the stakeholders in the light of the order of the Hon'ble Supreme Court. On consideration of the matter in the light of order of the Hon'ble Supreme Court and the report of the CPCB, the Tribunal directed:

“

5. *We do not find it necessary to hear the Ministry of Environment, Forest and Climate Change (MoEF&CC). MoEF&CC is free to hold discussions on the subject of limiting the use of Pet-cock as per letter of the DGFT and as per the orders of the Hon'ble Supreme Court. Subject to that, the CPCB may proceed to take further action in the matter. The Pet-coke and Furnace oil may not be allowed except in*

terms of the Report of the CPCB dated 15.02.2019 as follows:

“Considering the various directions and orders of Hon’ble Supreme Court regarding use of Pet-coke and Furnace oil containing higher sulphur, it is required that States and UTs, including Himachal Pradesh, formulate fuel policies regarding use of Pet-coke and FO in light of Hon’ble Supreme Court order dated 24.10.2017 (banning use of Petcoke and FO in NCR States) and 17.11.2017 (suggesting States/UTs to take similar measures) and further Hon’ble Supreme Court order dated 13.12.2017, 05.02.2018 and 26.07.2017 allowing use of Pet-coke in industries/processes which use Pet-coke and furnace oil either as feed stock (Calcined Pet Coke (CPC) units, Aluminum industries) or where they get absorbed along with product in manufacturing process (cement, Lime Kiln, calcium carbide industries). It is relevant to mention that use of Raw Petroleum Coke (RPC) in CPC units has been allowed with condition of 90% recovery of SO₂ emission. The same principle may be followed in industrial processes where use of FO as feed stock is considered by States/UTs.”

6. Further report in the matter be furnished by the CPCB after three months by e-mail at judicial-ngt@gov.in.

The application will otherwise stand disposed of.”

4. A copy of the report of the CPCB dated 03.01.2020 has been handed over during the hearing to the effect that the CPCB required the State PCBs/PCCs to furnish action taken report in the matter by 23.09.2019. 19 States/UTs have furnished ATRs while the remaining 13 are yet to submit the same. Direction of the CPCB dated 23.08.2019 is as follows:

“NOW, THEREFORE, in view the above and in exercise of the powers vested under Section 5 of the Environment/ (Protection) Act, 1986, following directions are issued:

- 1. State Government / Union Territory Administration shall formulate and enforce fuel policy regarding use of pet coke and FO in the State/UT in light of various orders passed by Supreme Court regarding use of pet coke and FO in Writ Petition (C) 13/1985.*
- 2. State Government / union Territory Administration through respective SPCB/PCC shall take strict action against any industry if found violating the fuel policy on use of pet coke and FO that will be enforced as above, using the powers conferred under environmental and FO that will be enforced as above, using the powers conferred under environmental laws.*

Action take report shall be submitted through SPCB/PCC by State/UT within one month i.e. by 23.09.2019.”

5. The States which have not yet furnished ATRs to the CPCB are:

1. Andhra Pradesh
2. Arunachal Pradesh
3. Assam
4. Bihar
5. Goa
6. Gujarat
7. Jammu & Kashmir
8. Jharkhand
9. Maharashtra
10. Odisha
11. Punjab
12. Uttarakhand
13. West Bengal

6. I.A No. 686/2019 was filed in O.A No. 138/2019 for enforcement of order dated 04.07.2019 in the context of steel processing unit at Kandori, Kangra, Himachal Pradesh using Furnace oil on the basis of State Fuel Policy for Himachal Pradesh which came up for hearing on 22.11.2019. The Tribunal directed:

“3. Let a factual report be furnished by the District Magistrate, Kangra, Himachal Pradesh State

Pollution Control Board (HPSPCB) and the Central Pollution Control Board (CPCB) before the next date by email at judicial-ngt@gov.in. If it is found that furnace oil is being used, the same must be stopped forthwith which will be the responsibility of the District Magistrate, Kangra and the HPSPCB. The SPCB will be nodal agency for coordination and compliance.”

7. In pursuance of order dated 22.11.2019, a joint Committee of the CPCB, District Magistrate, Kangra and the State PCB visited the site in question and was informed that the plant was closed and production was stopped. The unit was ready to switch over to Low Sulphur Heavy Stock (LSHS) as per recommendation of the Committee. A copy of inspection report dated 03.01.2020 has been handed over during the hearing.
8. I.A No. 762/2019 has been filed on behalf of the Steel Authority of India Ltd. which is operating the unit in question stating that in pursuance of order dated 22.11.2019, use of Furnace oil as fuel has been stopped but the unit is not allowed to operate on alternative fuel also. Prayer has been made to allow operation of the unit using LSHS. Further prayer is to clarify orders dated 28.03.2019 and 04.07.2019 recording *“The pollution load of SO₂ is four times higher **when** Low Sulphur Heavy Stock (LSHS) and LDO are used”* as word **“when”** has been wrongly used in place of **“than”** which expression has been used in the report of the Technical Expert Committee of the CPCB dated 15.02.2019.
9. After hearing the learned counsels for the parties and considering the matter, we direct as follows:
 - i. 13 States which have still not furnished their respective ATRs in pursuance of direction of the CPCB dated 23.08.2019 may

do so positively within one month. If there is non-compliance after 31.03.2020, the defaulting States will be liable to pay compensation at the rate Rs. 1 lakh per month from 01.04.2020 till compliance.

ii. We clarify that the expression “when” in the order dated 28.03.2019 and 04.07.2019, as discussed earlier, may be read as “than”.

iii. It is made clear that this Tribunal has vide order dated 22.11.2019 directed that if Furnace oil was being used, the same must be stopped. Alternative fuel having least pollution potential, which may be approved by the State PCB, can be used in accordance with law.

iv. The CPCB and the State PCB, Himachal Pradesh may file further follow up reports before the next date by email at judicial-ngt@gov.in.

List again on 01.04.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

January 07, 2020
Original Application No. 67/2019
(I.A. No. 32/2019)
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