

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

(By Video Conferencing)

Original Application No. 67/2019

(With report dated 12.01.2021)

Sumit Kumar

Applicant

Versus

State of Himachal Pradesh & Ors.

Respondent(s)

WITH

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

Amarjeet Kumar

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 17.03.2021

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

Respondent: Mr. Raj Kumar, Advocate for CPCB
Mr. Sharat Kapoor, Advocate for SAIL

ORDER

1. This order is being passed in continuation of earlier orders dated 28.03.2019, 04.07.2019 and 16.07.2020 on the subject. The issue for consideration is the regulation and control of use of Pet-coke and furnace oil (FO) as fuel to prevent damage to environment and public health.

2. Vide order dated 28.03.2019, the Tribunal considered the response of the CPCB dated 15.2.2019 on the subject in the light of orders of the

Hon'ble Supreme Court 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 petcoke in industries/processes which use petcoke 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) and the expert opinion about harmful effect of their use generally. Applying the 'Sustainable Development' 'Precautionary' principles, the Tribunal directed CPCB to adopt measures for regulation and control. Relevant part of the order is extracted below:-

"3. Accordingly, the response has been received vide e-mail dated 15.02.2019 from the CPCB. The conclusion therein is as follows:

"Considering the various directions and orders of Hon'ble Supreme Court regarding use of petcoke and furnace oil containing higher sulphur, it is required that States and UTs, including Himachal Pradesh, formulate fuel policies regarding use of petcoke 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 petcoke in industries/processes which use petcoke 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."

*4. The reason for the above conclusion is **huge emission of SO₂ and other pollutants on account of use of Petcoke and furnace oil by the industries which has been banned in several States but continuing in some of the States. A Technical Expert Committee was constituted to evaluate pollution load and as per the report of the said Committee, pollution load of SO₂ is four times higher when Low Sulphur Heavy Stock (LSHS) and LDO are used.***

5. ***On consideration of the matter, we find that in view of established adverse impact of use of Petcoke and furnace oil by the industries, prohibition of its use may need consideration on 'Precautionary' principle as well as 'Sustainable Development' principle statutorily recognised under the National Green Tribunal Act, 2010, the industries may have to switch over to alternatives and cleaner fuels.*** We may note that air quality in many of the locations in India is not of prescribed quality and as many as 102 cities have been identified as "non-attainment cities". The said cities are spread over almost in all the States, including the State of Himachal Pradesh. 100 industrial clusters are declared critically polluted throughout India. This makes it imperative that any measure which is helpful in controlling air pollution must be preferred to the extent viable. These aspects have been considered by the Tribunal in order dated 08.10.2018 in O.A No. 681 of 2018 in News item published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with multiple timelines to clean air in 102 cities to be released around August 15" and order dated 13.12.2018 in Original Application No. 1038/2018 in News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" respectively.

6. ***In view of the above, we accept the report of the CPCB and direct that the same may be given effect to. The CPCB may issue appropriate directions in this regard to the concerned States and Union Territories indicating coercive measures against those who fail to comply with the directions.*** Response of the States be taken and compiled within two months and further action proposed by way of a report to this Tribunal before the next date."

3. The above order was reiterated vide order dated 04.07.2019 and further report in the matter was directed to be furnished by the CPCB.

4. The matter was last considered on 16.07.2020 in the light of compliance report filed by the CPCB on 14.07.2020 in respect of action taken in several States/UTs. It was observed:

"4. In view of above, compliance report has been filed by the CPCB on 14.07.2020 with summary of action taken reports from 27 States/UTs. Some of the reports of the States/UTs are contrary to the orders of the Tribunal referred to above. Reports which are non-compliant with the orders of this Tribunal based on order of the Hon'ble Supreme Court will stand rejected to that extent. Orders of the Tribunal be given effect and CPCB may ensure compliance by issuing such further direction as may be necessary in exercise of its statutory power.

5. The CPCB may file its action taken report within four months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”

5. Accordingly, further report has been filed by the CPCB on 12.01.2021 as follows:

*“7. Taking cognizance of the latest order dated 16.07.2020 of Hon'ble Tribunal, two more SPCBs namely Assam and Odisha provided ATR, and two SPCBs namely Goa and Uttarakhand provided updated ATRs, whereas two other SPCBs namely Sikkim and Lakshadweep have provided updated ATRs after a draft status report was circulated by CPCB to SPCBs/PCCs on 21.12.2020 for updating (**Annexure IV**). Thus, ATRs have been submitted by total twenty-nine States/UTs on CPCB's direction dt. -23.08.2019. A summary of the ATRs of **twenty nine** States/UTs, along with copies of ATRs is annexed at **Annexure-V**.*

The ATRs from 29 States/UTs reveal that:

- **Twelve** States/UTs have informed about use of both pet coke and FO not allowed
(Goa, Manipur, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand, Andaman & Nicobar, Chandigarh, Daman & Diu, Dadra & Nagar Haveli, Lakshadweep)
- **Five** States/UTs have informed about use of pet coke allowed only in certain processes/ industrial sectors, and use of FO allowed with conditions
(Bihar, Chhattisgarh, Gujarat, Maharashtra, Tamil Nadu)
- **Four** States / UTs have informed about allowing use of pet coke / FO with conditions
(Andhra Pradesh., Kerala, Madhya Pradesh, Telangana)
- **Eight** States / UTs are in the process of finalising their draft fuel policies
(Assam, H.P. J&K, Karnataka, Meghalaya, Odisha, Punjab, Puducherry)

8. ATR is still awaited from the remaining **three** States/UTs, namely, Arunachal Pradesh, Jharkhand and West Bengal.”

6. We are informed that the matter has also been dealt with vide order dated 09.10.2018 in W.P. No. 13029/1985, *M.C. Mehta v. Union of India & Ors.*, by the Hon'ble Supreme Court, wherein CPCB report dated 04.10.2018 has been quoted which is as follows:

“2. xxx.....xxx.....xxx.....

- i. *Raw Petroleum Coke is feed stock for producing calcinated petroleum coke which is a raw material for anode making in aluminium industries. Therefore, calcination of Raw Petroleum Coke is a pre-requisite to produce anode grade calcined pet coke having Sulphur content less than 3.5%.*
- ii. *As per BIS guidelines, calciners are permitted to use high Sulphur containing raw petroleum coke for making CPC having Sulphur content less than 3.5%. There shall be emission of SO₂ in high concentration (para 1 of results) which needs to be treated in Flue gas desulphurization system having efficiency of Sulphur removal more than 90%.”*

7. It is stated that the matter is still being considered by the Hon’ble Supreme Court.

8. Accordingly, CPCB may take further action in the matter in compliance of directions already issued, subject to orders of the Hon’ble Supreme Court.

The applications are disposed of.

A copy of this order be forwarded to the CPCB and State PCBs/PCCs by e-mail for compliance.

In view of above order, all pending I.A.s will stand disposed of.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

March 17, 2021
Original Application No. 67/2019
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