

Item No. 03

Court No. 1

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

Appeal No. 44/2022

M/s BMV Gragrances Pvt. Ltd.

Appellant

Versus

Commission for Air Quality Management in
National Capital Region and Adjoining Areas & Ors.

Respondent(s)

Date of hearing: 06.12.2022

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

Appellant: Mr. Ravi P. Mehrotra, Senior Advocate with Mr. Abhinav Kumar Malik &
Mr. Prashant, Advocates

ORDER

1. This is an appeal filed under Section 18 of Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 (hereinafter referred to as 'CAQMNCR Act, 2021') assailing order dated 24.11.2022 passed by the Commission for Air Quality Management in National Capital Region and Adjoining Areas (hereinafter referred to as 'Commission') in exercise of its powers under Section 12(2)(xi) of the Act, 2021 directing appellant to close its unit for violation of conditions for non-user of generator without RECD & dual fuel system for industrial purposes in terms of GRAP Stage-II orders which were invoked on 19.10.2022.

2. Learned Counsel for the appellant submitted that he has already taken steps for installation of said system and placed order with supplier

but system has not been installed for some reasons beyond control of appellant. However, it is further stated that before passing impugned order, no show cause notice or opportunity was given to appellant and this order has also not been passed as an interim order for closure for a limited period but simply a closure order has been passed without any timeframe, hence, impugned order is in violation of principles of natural justice.

3. Learned Counsel for the appellant also stated that appellant's unit is lying closed since 28.11.2022 and is suffering huge revenue losses on account of impugned order which has been passed in violation of principles of natural justice. It is further stated that electricity has also been disconnected.

4. It is no doubt true that before passing an order of closure without any time limit, an opportunity of show cause should have been accorded to aggrieved person which has not been done in the present case. We are, however, informed that protesting the impugned order of closure, a representation dated 30.11.2022 has been submitted to the Commission but no decision has been taken thereon. Learned Counsel for appellant also stated that in case appellant is allowed to resume its functioning of the unit, it undertakes not to use generators till the time, final order is passed by the Commission.

5. Looking to the facts and circumstances and also in the interest of justice, we direct that impugned order dated 24.11.2022 shall be treated to be a provisional or interim order and Commission shall consider appellant's representation dated 30.11.2022 and take a final decision in the matter within one week from the date of presentation of a copy of this order before Commission. Till then, we permit appellant to resume

functioning of unit and electricity supply shall also be restored, subject to undertaking given by appellant through his counsel that DG set installed at premises of appellant shall not be used by appellant and it shall also maintain and observe all other directions issued under GRAP Stage-II orders effective from 19.10.2022 for the purpose of observation of air quality in national capital region and adjoining areas.

6. We may place on record that a written undertaking to the aforesaid effect has been filed by appellant and is taken on record.

7. The appeal is disposed of accordingly.

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

December 06, 2022
Appeal No. 44/2022
DV