

KERALA STATE POLLUTION CONTROL BOARD

Pattom P.O, Thiruvananthapuram -695004

PCB/PLKD/CE/32/99

Date:

19.08.2005

ORDER

The Kerala State Pollution Control Board issues 'Consent to Operate Order no. W/09/137/2000 with validity upto 31.12.2004 to M/s Hindustan Coca Cola beverages Pvt. Ltd, Moolathara Village, Kanimari P.O, Chittur taluk, Palakkad district represented by its Occupier viz. Vineeth Kumar Gupta.

When the Occupier of M/s Hindustan Coca Cola Beverages Pvt. Ltd hereinafter referred to as the 'Company', proceeded with the production, the local administrative authority viz. Perumatty Grama Panchayat refused license to operate the Company. The Order of the Panchayat restraining the Company from operating was challenged before the Honourable Government of Kerala and the Government have interfered with the Order of the Panchayat on necessary conditions. The decision of the Government to permit the Company to operate on conditions has been challenged before the Hon'ble High Court of Kerala and the Hon'ble High Court has interfered with the Order of the Government as per the Order dated 09.03.2004 and resultantly the Company had stopped production. The Judgement of the Hon'ble High Court of Kerala lifting the ban imposed on the Company in the matter of production was on 07.04.2005. With effect from 09.03.2004 to 07.04.2005 the Company was not under operation, and it resumed production on 8-8-2005.

The 'Consent to operate' order issued to the Company under the Water (Prevention and Control of Pollution) Act was valid upto 31.12.2004. When the Company was not under operation in pursuance to the order of the Hon'ble High Court of Kerala, the Company had submitted application dated 20.09.2004 for renewing the Consent to Operate with effect from 01.01.2005. The above application for renewal of consent had the following defects:

1. The changes in raw materials, production process, products, waste generation and waste quality were not stated in item no.6 of the application.
2. Cadmium was found in concentration in the range 200 to 300 milligrams per kilogram in the sludge from your effluent treatment plant. The observed concentration is much above the tolerance/ permissible limit for hazardous wastes which categorically establishes that cadmium bearing raw material/materials are used in the production process or effluent treatment. Shri.S.K.K Warriar, Area Human Resources Manager of the Company has unequivocally stated for the Company in letter no. HCCBPL/PCB-22 dated 20.11.2004 addressed to the Members of the Supreme Court Monitoring Committee that your source water viz. ground water is not at all contaminated and that it conforms to the standard of drinking water laid down by Bureau of Indian Standards; therefore the source of cadmium is some other raw material used by you; but your application does not contain the particulars of the source of cadmium and is therefore incomplete.

Since the application submitted by the Company was defective and further on the reason that the Company was not functioning with effect from 09.03.2004, the Board has not entertained the consent renewal application dated 20.09.2004 of the Company. As per the provisions of law and procedures being adopted by the Board, the consent renewal application would be considered on the basis of performance of the Company in the matter of pollution control measures. Since the Company was under the order of closure with effect from 09.03.2004, the nature of production envisaged and its resultant impact on environment could not be assessed by the Board within the period of 4 months of submitting the application dated 20.09.2004 for renewing the Consent to Operate. Since the application was found incomplete and defective, the Company was not entitled to claim the advantages envisaged under section 25(7) of the Water (Prevention and Control of Pollution) Act.

The Company had continued its production by virtue of the Consent to Operate granted by the Board with effect from 02.04.2002 to 09.03.2004. As per the provisions of law, it is mandatory on the part of the Occupier to inform the Board about the materials/components used for producing different products. It is the statutory obligation on the part of the Board to see that no adverse impact is caused at any stage to the environment, human beings as well as other being, from the discharge of effluents of all kinds/forms/nature.

In the meanwhile the Board had examined the sludge generated by the Company and it was found that it was containing the heavy metal cadmium at concentration of 200 to 300 mg per kg of sludge, which is 400 to 600% above the tolerance/permissible limit. The sludge of the Company is still in existence and the same contains the above mentioned concentration of cadmium. The Occupier of the Company at no juncture informed the Board about the use of cadmium or its compounds in any nature/form during the course of production of its different products.

It was in the above circumstances that the Board had conducted necessary studies in the areas in the vicinity of the Company and found the water of the well of Shri. Manikkam Chettiar and the water of the Common well of the Panchayat were contaminated by the seepage or spread of cadmium from the Company. In the meanwhile the Monitoring Committee (popularly known as the Supreme Court Monitoring Committee or SCMC) appointed by the Hon'ble Apex Court of India as per the Order dated 14.10.2003 in W.P.(C) 657/95 had held an inspection of the Company and its surrounding areas and noticed that due to the operation of the Company severe pollution was caused to the drinking water source of a large number of the Company severe pollution was caused to the drinking water. Hence specific instructions were issued to the local people not to consume the well water. Necessary instructions were issued to the Board to issue proper direction to the Company to provide drinking water facility to the local people who are affected due to the operation of the Company and further to direct the Company not to discharge effluent of any nature, unless the effluent is subjected to further treatment by using the advanced technology popularly known as Reverse Osmosis System. On the basis of the above directions issued by the SCMC,

the Board had issued the letter bearing PCB/HO/HW/PLKD/542/04 dated 18.12.2004 to the Company to provide water supply to the people and to install Reverse Osmosis System or any alternate water purification system. When the Company did not respond to the above letter dated 18.12.2004 of the Board another direction dated 08.02.2005 bearing no. PCB/HO/HW/PLKD/542/04 was issued directing the Company to implement the directions of the SCMC. Though the Company had submitted its letter dated 22.04.2005 stating that it would provide water supply to the local community, no effective action was taken by the Company and no consent of the Board was sought so far to establish the reverse osmosis system or any other effective system for the better treatment and purification of the effluent treatment plant.

It was in the above circumstances that the Board has issued the letter dated 07.05.2005 bearing the no. PCB/PLKD/CE/32/99 pointing out the deficiencies detected in the Company's application dated 20.09.2004 for renewing the Consent to Operate and further directing the Company to disclose the source of cadmium detected in the sludge as well as in the water of nearby wells. The Company responded to the letter dated 07.05.2005 of the Board by the reply letter dated 19.05.2005 of the Board by the reply letter dated 19.05.2005 justifying the application for renewal of consent as if the same were free from defects and claiming that the Company was enjoying deemed consent as provided for in Section 25(7) of the Water (Prevention and Control of Pollution) Act. The opportunity provided by the Board to the Company to rectify the defects in the application was unavailed by the Company. It was in the above circumstances that the Board had issued Show Cause Notice dated 01.07.2005 directing the Company to offer its explanation as to why the renewal of Consent to Operate applied for under the Water (Prevention and Control of Pollution) Act should not be refused. The Show Cause Notice of the Board dated 01.07.2005 was responded by the Company by offering its reply/explanation dated 12.07.2005. In the above explanation, the Company had requested the Board to provide an opportunity of being heard by the Chairman of the Board and sought the permission to peruse the documents maintained by the Board in the matter of the Company.

In response to the request made by the Company in its explanation dated 12.07.2005, the undersigned heard the representatives of the Company on 28.07.2005. After the hearing, the Company had requested the undersigned to provide time upto 16.08.2005 to submit the written arguments against the dinging of the Board in the Show Cause notice dated 01.07.2005. Later the company has offered its written arguments vide letter dated 13.08.2005 raising the following contentions.

1. The Captioned Notice is the 2nd communication by the Department on the same subject and hence invalid.
2. The Captioned Notice is hit by statutory limitation.
3. The Captioned Notice ultra vires the functions of the Board.
4. Issuance of Captioned Notice stands adjudicated; further adjudication will amount to judicial indiscipline.
5. Prejudice against the Company.

The undersigned has considered the contentions of the Company as detailed in the explanation dated 28.07.2005, and the written argument dated 13.08.2005 in detail and conducted a scientific and technical study on the issues and on perusal of the entire data it is decided to inform the company as follows:

1. Though the Company admits the presence of cadmium in its sludge, no explanation is offered to the Board about the source of the cadmium. The proceeding of the Company forwarded to the SCMC, accompanied by report of an approved laboratory, categorically establishes that the ground water does not contain cadmium beyond the permissible limit. But in the sludge, more than 400 to 600% cadmium beyond the permissible limit is detected. The Company has not divulged the source of cadmium so far, inspite of the very specific direction issued by the Board.
2. It was detected by the board that due to the existence of cadmium in the effluent as well as in the sludge, the ground water in the vicinity was found contaminated. Though specific direction was issued to the company to provide drinking water facility to the people of the affected area and to provide Reverse Osmosis System or any other more efficient system for better treatment of effluent, the Company had failed to provide such facilities before commencing the production. Though the modern technology of Reverse Osmosis System was found adopted in the treatment of raw water to produce the water for use in the production purpose of various products of the Company, such system was not installed for the treatment of effluent at the effluent treatment plant (ETP). In the explanation offered by the Company, it was stated that the Company is having an ETP of capacity 8,00,000 litre/day. As per the records of the Board, the Company produces 8,00,000 litre of effluent per day, in its permitted capacity of production. Thus it is clear that the Company is having the facility to store the effluent only for one day of production. Therefore the Company shall be forced to discharge the effluent, on continued production, and if thus discharge is effected, the discharge shall definitely pollute the ground water. Therefore the continuation of production without establishing either reverse osmosis system or any other modern technology to further treat the effluent shall definitely lead to pollution problem. On enquiry it has been noticed by the Board that a similar plant of the Company owned in Tamil Nadu is having an ETP facility for 12,00,000 litre of effluent in which the Company has provided Reverse Osmosis System. But no such facility has been provided by the Company in Moolathara village, though the poisoning due to cadmium is detected in well water as well as in the sludge.
3. The Board on 07.05.2005 issued a letter to the Company to rectify the defects noticed in the application for renewal of consent as well as in the operation of the plant for which the company has submitted its explanation on 19.05.2005 was found unsatisfactory, the Board has issued the Show Cause Notice dated 01.07.2005. Therefore the letter dated 07.05.2005 calling upon the Company to rectify the anomalies/defects in that application as well as in the plant, and the Show Cause Notice dated 01.07.2005 to offer its explanation as to why the Consent to Operate should not be refused, are strictly in accordance with the provisions of law and free from any procedural/legal infirmities. Therefore the defense of the Company made in its argument that the 'captioned notice' (Show Cause Notice dated 1-7-2005) is the second communication by the

Board on the same subject and hence invalid, is not a sustainable contention in law.

4. The company was not entitled to get the advantage of section 25(7) of the Water (Prevention and Control of Pollution) Act 1974, since the application submitted by the Company for renewal of consent was defective and the defects have been duly pointed out to the Company, at least 3 months before commencing the production after the closure of the Company on 09.03.2004, the production was commenced only on 08.08.2005. But the Company did not care to rectify the defects in the application though the deficiencies in the application were specifically brought to the notice of the Company by the letter dated 07.05.2005 of the Board. The Company can claim the advantage of Section 25(7) of the Water (Prevention and Control of Pollution) Act 1974 only if the production in the plant was either commenced or ongoing prior to the receipt of the letter dated 07.05.2005 of the Board.
5. The judgement of the Hon'ble High Court of Karnataka in Vijayanagar Education Trust (Regd.), Bangalore Vs Karnataka State Pollution Control Board, Bangalore in no way render assistance to the case of the Company since the judgement of the Karnataka High Court dated 04.01.2002 in W.P No. 23341 of 2001 was in entirely different situation and in the above judgement the finding of the Hon'ble High Court was that the possibility of pollutants entering the reservoir directly does not arise at all because the reservoir was situated 6 km away from the spot where the institution was to be established and specific direction was issued to the SPCB to insist on conditions for preventing the chance, if any, for causing pollution at a distance of 6 km of the reservoir. In the instant case, the poisoning caused from the hazardous waste containing cadmium to the well water of the nearby residents and the cadmium detected in the sludge generated by the Company establishes the direct nexuses between the Company and its poisoning capacity. Therefore the judgement of the Karnataka High Court shall not render any assistance to the Company in its case on hand.
6. Another judgement highlighted by the Company in support of its claim under Section 25(7) of the Water (Prevention and Control of Pollution) Act, was Live Oak Resort (P) Ltd and another Vs Panchami Hill Station Municipal Council and another, of the Hon'ble Apex Court of India. The facts of the said case are entirely different from the case of the Company. The above decision was rendered by the Hon'ble Supreme Court when the Municipal Council had failed to communicate its decision on the application for permission for construction of a building. The facts and circumstances of the said case are entirely different from the facts of the Company at hand and the judgement delivered did not have any reference or relevance on environmental issues, where a Company directly causes pollution to the environment. Thus there was absolutely no statutory limitation on the captioned notice of the Board and the Company is not entitled to the advantage of deemed consent when it causes direct pollution to the ground water by adding poisoning substances.
7. The argument of the Company that the captioned notice ultra vires the function of the Board is totally incorrect and misconceived. The Water (Prevention & Control of Pollution) Act contains different chapters on functions, powers etc. That such powers as on issue of consent, making complaint for imposition of penalty etc and such procedural matters as issuing

- of Show Cause Notice are not mentioned under the chapter on functions does not make those powers and procedures non-existent.
8. No Company/institution/individual gets the privilege to contaminate the water bodies, air and environment by interpreting or misinterpreting the provisions of law, including section 25(7) of the Water (Prevention and Control of Pollution) Act.
 9. Regarding the proceedings taken place before the Hon'ble High Court of Kerala, the Board has got necessary information from the Standing Counsel. The contention raised by the Company that the Hon'ble High Court of Kerala had considered the validity and sanctity of the letter dated 07.05.2005 of the Board and the reply submitted by the Company dated 19.05.2005 etc are incorrect. The issue/dispute considered by the Hon'ble High Court of Kerala in the case of the Company were not produced before the Hon'ble High Court of Kerala along with an affidavit or statement either by the Board or by the Company, the Hon'ble high Court has not provided any consideration to the letter of the Board and the reply submitted by the Company.
 10. The undersigned has perused the entire records pertaining to the action taken by the Member Secretary of the Board, in the issues involved with the Company. But no materials to substantiate the prejudice as alleged by the Company has been found. The undersigned is of the considered opinion that the Member Secretary has rightly discharged his duties and obligations as stipulated under law. During the course of hearing held on 28.07.2005 as well as in the reply statement and the argument note submitted by the Company, no material has been produced to substantiate the alleged prejudice of the Member Secretary of the Board.
 11. In the above circumstances the undersigned is of the considered opinion that the operation of the Company causes severe pollution problems to the sub-surface and ground water, which is a common property of every citizen as well as the State. No person/institution/establishment/company has got the right to pollute the drinking water, as categorically declared by the Hon'ble Supreme Court of India as well as the Hon'ble High Court of Kerala. Since the functioning of the Company in the present manner causes severe environmental problems, including poisoning/contamination of well water, the undersigned, by invoking the powers conferred under Section 25(4), 27(2) and 33 A of the Water (Prevention and Control of Pollution) Act, 1974 refuses to issue the consent to operate and, by rejecting the defective application submitted by the Company to stop production of all kinds of products with immediate effect. This is without prejudice to the liability of the Company to supply drinking water to the affected population of the area, as ordered by the Board.

For and on behalf of the
KERALA STATE POLLUTION CONTROL BOARD

CHAIRMAN

1. Mr.Vineeth Kumar Kapila
(Occupier, Hindustan Coca-Coal Beverages Private Limited, Palakkad),
Enkay Towers, Udyog Vihar,
Phase V, Gurgaon

Haryana – 122 106.

2. Mr.N.Janardhan,
Plant Manager,
Hindustan Coca-Coal Beverages Private Limited,
Kannimari P.O,
Palakkad – 678 534

Copy to :

1. Adv. Babu Joseph Kuruvathazha, Standing Counsel
2. Environmental Engineer, District Office, (Palakkad)
3. The Secretary, Perumatty Grama Panchayat, Vandithavalam P.O, Palakkad