



Introduction:

In a recent decision dated March 11, 2020 concerning penalties levied for environmental pollution, the Delhi High Court has set aside a penalty of INR 1 crore levied by the Central Pollution Control Board (**CPCB**) under Section 5 of the Environment Protection Act, 1986 (**Act**) for an alleged failure of the Public Works Department-Govt of National Capital Region Delhi (**PWD**) to adhere to guidelines of dust mitigation measures in handling construction material and waste. The copy of the order dated March 11, 2020 is attached for your perusal and consideration.

The brief facts of the case are as under:

- The CPCB periodically carried out several inspections and had meetings with the PWD calling upon the PWD to adhere to the guidelines of dust mitigation measures in handling construction material and waste. As a consequence of non-compliance of the said guidelines by the PWD, the CPCB by its letters (dated April 8, 2019; May 15, 2019 and September 17, 2019), called upon the PWD to pay compensation of INR 1 crore under the Act for the violation of the guidelines.
- Post the raising of the demand, the PWD made several representations to the CPCB seeking the recall of the penalty, but the same was to no avail. The PWD therefore filed the Writ Petition to assail the demand of the CPCB.

Contentions of the PWD:

- By placing reliance upon the provisions of Rule 4 (3) (a) of the Environment Protection Rules, 1986 (**Rules**), it was contended that before any such penalty could be levied, the CPCB was required to issue a notice upon the PWD seeking its response to the alleged violations. In the absence of such a notice, the penalty was bad in law.

Contentions of the CPCB:

- The CPCB however pleaded that prior to issuance of the penalty, several meetings and inspections were carried out whereby the PWD was called upon to adhere to the guidelines framed for mitigation of dust and handling of construction materials and allied waste.

Findings of the Delhi High Court:

- On a review of the facts, the Delhi High Court took exception to the fact that the CPCB did not issue any prior notice to the PWD before levying the penalty. Further, the CPCB also refused to give any heed to the representations made by the PWD after levy of the penalty.
- The Delhi High Court thus directed the CPCB to treat the Writ Petition as the representation of the PWD and against the penalty levied.
- Further, the CPCB was directed to pass a reasoned order after granting the PWD an opportunity of being heard in the matter, while granting liberty to the PWD to challenge the decision of the CPCB in accordance with law.

ELP Comment:

- This decision by the Delhi High Court is very timely given the increase in cognizance of cases being taken by the National Green Tribunal and industry regulators. While pollution control laws are required to be adhered to by the industry for the benefit of the environment, such adherence to the letter of the law equally applies to the statutory authorities empowered to charge violators with penalties/prosecution under the provisions of various pollution control laws.
- The Delhi High Court has essentially re-affirmed the requirement of following the due process of law and respecting the principles of natural justice of giving a fair hearing before any coercive action is taken against violators under various pollution control laws .

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com

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