

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

APPEAL No. 05/2013 (T_{HC})

27th May, 2013

CORAM:

- 1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**
- 2. Hon'ble Dr. P.C. Mishra
(Expert Member)**
- 3. Hon'ble Shri P.S. Rao
(Expert Member)**
- 4. Hon'ble Shri Bikram Singh Sajwan
(Expert Member)**

B E T W E E N:

Haryana State Pollution Control Board,
Plot No. C-11, Sector 6, Panchkula, Haryana
through its Regional Officer, PanipatAppellant

A N D

M/s Haryana Organics (A Division of Globus Spirits Ltd.)
4 Km stone, Chulkana Road, Samalkha,
District Panipat, Haryana
through its authorized signatory.Respondent

**(Advocates appeared: Mr. Narender Hooda, Sr. Advocate and
Mr. Devinder Pratap Singh, Advocate for the Appellant and
Mr. Sapan Dhir, Advocate for Respondent)**

J U D G M E N T

1. By this Appeal/Application filed under Section 14(i) read with Section 16 of the National Green Tribunal Act, 2010 Haryana State Pollution Control Board (HSPCB) challenges the order dated 6.11.2009 (Annexure P-14) passed by the Appellate Authority constituted under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974.

2. By the impugned order, the Appellate Authority directed that consent to operate Distillery unit run by Respondent (M/s. Haryana Organics) for the year 2008-09 shall be deemed to have been granted and hence forfeiture of Bank Guarantee of Rs. 12.25 lacs as directed by HSPCB is void and be restored to the latter.

3. Certain undisputed facts may be narrated at the outset in order to narrow down the compass of the dispute. They are as follows:

“M/s. Haryana Organics is a company incorporated under the Companies Act, 1956. Previously it used to manufacture rectified spirit by using molasses as raw material. The distillery has switched over from use of molasses to grains. In Writ Petition (Civil) No. 725/1994 titled “Yamuna Vs. Central Pollution Control Board & Anr.” the Hon’ble Apex Court passed an order dated 31.01.2001, constituting a Committee consisting of Shri K. Roy Paul, Additional Secretary or such other senior officer as may be

deputed by the Ministry of Environment & Forest (MoEF), the Chairman of Central Pollution Control Board (CPCB) and the Chairman of HSPCB. The Committee was directed to hold meeting on or before 31.01.2001 and decide whether to allow all or any of the Distilleries to operate or not to operate. This direction was given in the wake of closure of four (4) Distilleries out of such five (5) Distilleries operating in the State of Haryana, as per directions of the HSPCB. The three Member High Powered Committee in its meeting dated 08.10.2007 asked the HSPCB to direct M/s. Haryana Organics to submit a time bound programme for completion of the installation of RO/Nano Filtration system in order to ensure zero effluent discharge from its Distillery. The Committee also directed the HSPCB to seek a Bank Guarantee of Rs. 50.00 lacs in order to ensure commitment of M/s. Haryana Organics for commissioning the RO/Nano filtration system in accordance with the time bound programme. A joint visit by the officers of CPCB and HSPCB was to be arranged in the month of December, 2007 in order to verify the compliance. The Distillery (M/s Haryana Organics) submitted the time bound programme. Thereafter, M/s. Haryana Organics was informed by the HSPCB to execute the time bound programme for installation of the equipment i.e. bio-composting, Reverse Osmosis (RO), Nano Filtration (NF), Multiple Effect Evaporator, etc. to achieve zero effluent discharge.

M/s. Haryana Organics filed an application for consent to operate for the year 2008-09 under the Water (Prevention and Control of Pollution) Act, 1974 (for short, the Water Act) and Air (Prevention and Control of Pollution) Act, 1981 (for short, the Air Act). It assured that Nano filtration system for treatment of the trade effluents will be installed within a short span and necessary Bank Guarantee will be furnished. By letter dated 08.04.2008, M/s. Haryana Organics furnished the Bank Guarantee of Rs. 50.00 lacs along with the Pert chart for installation of the equipments as directed by the HSPCB.”

4. There is no dispute about the fact that the HSPCB issued a show cause notice dated 28.04.2008 to M/s. Haryana Organics to comply with the directions of High Power Committee and furnish fresh documents to prove compliance within 15 days failing which the letter was to be treated as legal refusal of consent for the year 2008-2009. An opportunity of personal hearing was given to M/s. Haryana Organics on 09.07.2008 where Shri Parvesh Chawla, Manager, Public Relations of the Distillery (M/s Haryana Organics) promised to comply with the directions within 15 days failing which closure action could be initiated by the Pollution Board. M/s. Haryana Organics informed the HSPCB vide communication dated 26.09.2008 that installation of RO/Nano filtration system was done and a separate compliance report was also forwarded to the latter on 16.10.2008.

5. Briefly stated, it is the case of HSPCB that in pursuance to a complaint received from the office of the Deputy Commissioner, Sonapat dated 26.10.2008, the Distillery unit of M/s. Haryana Organics was visited and samples were collected from the outlets thereof. The samples were sent to the authorized laboratories. The sample's analysis indicated that the unit had failed to achieve zero discharge of the effluent and the trade effluent was being discharged in the drain leading to Sonapat, which contaminated the water of Yamuna river. Since there was violation of the directions issued by the three Member High Powered Committee, M/s. Haryana Organics was called upon to explain its stance. After personal hearing, M/s. Haryana Organics was given warning to comply with the directions and ensure zero discharge of effluent from the outlet, within a period of fifteen (15) days. Another direction was issued to extend the validity of Bank Guarantee upto 31st December, 2009. Accordingly, M/s. Haryana Organics extended the validity of Bank Guarantee upto 31.12.2009.

6. According to HSPCB, in spite of such assurance given by M/s. Haryana Organics there was no compliance made to achieve zero discharge of contaminated effluents. Besides acoustic chamber on DG set was not installed and analysis report of bottle washing section was not submitted. Again, a team of officers of CPCB and SPCB visited the Distillery on 02.04.2009 and collected samples of trade effluents that were being discharged from the outlets of the unit. It was found that the samples collected from the outlets of the bottling plant exceeded permissible limits of contamination. Eventually,

another opportunity of personal hearing was given to M/s. Haryana Organics on 08.05.2009 and thereafter a notice was issued under Section 33-A of the Water Act on 11.05.2009 calling upon the Distillery as to why 25% amount of the Bank Guarantee be not forfeited. A separate notice was issued on 14.05.2009 calling upon M/s. Haryana Organics to show cause as to why closure of the unit may not be ordered. During the course of personal hearing, it was assured by M/s. Haryana Organics that within fifteen (15) days the compliance would be made. The part of Bank Guarantee, to the extent of 25% amount was forfeited in view of the guidelines issued by the three Member High Powered Committee and as per the policy approved by the HSPCB in a meeting dated 09.03.2009.

7. It is further the case of HSPCB that the order dated 11.05.2009 to forfeit amount of Rs. 12.25 lacs, out of Bank Guarantee, was well reasoned and supported by sufficient material. Still, however, the Appellate Authority erroneously interfered with the said order and quashed the directions issued by the HSPCB vide the order impugned. The impugned order passed by the Appellate Board is incorrect and improper. Hence, the Applicant (HSPCB) challenged the said order by filing CWP No. 10832/2010, in the Hon'ble High Court of Punjab and Haryana.

8. The Writ Petition was transferred to this Tribunal by Hon'ble High Court of Punjab & Haryana vide order dated 22.01.2013. In the meanwhile, the Distillery was allowed to run under interim orders of the Hon'ble High Court.

9. M/s. Haryana Organics contended that due compliance of the directions was made much before the forfeiture of 25% of the Bank Guarantee. It was further clarified that RO/Nano filtration system was installed and made operational. It was, therefore, contended that forfeiture of the 25% amount of Bank Guarantee was illegal and as such the order of the HSPCB was liable to be quashed.

10. The Appellate Authority heard the parties and allowed the Appeal. The Appellate Authority directed to refund the forfeited amount of Rs. 12.25 lacs to M/s. Haryana Organics. Being aggrieved with such order of the Appellate Authority, the Writ Petition was filed by the HSPCB, which is now the subject matter of the present Appeal/Application.

11. We have heard Learned Counsel for the parties in *extenso*. On behalf of the Appellant (HSPCB), Learned Sr. Counsel Mr. Narender Hooda contended that directions under Section 33-A of the Water Act could be given in order to seek due compliance of the safety measures viz. installation of RO/Nano filtration system and that is why the Bank Guarantee also could be demanded. He contended that forfeiture of the 25% of the Bank Guarantee is within the powers of the HSPCB in as much as the installation of the RO/Nano filtration system was not done within the timeframe as per the Pert chart provided by M/s Haryana Organics.

12. He argued that the forfeiture was effected after issuing the notice dated 11.05.2009, on finding that there was non-explanation of the delay caused in installation of the required acoustic enclosure on

DG set, non-submission of analysis report of bottle washing section and non-compliance of zero discharge. He submitted that forfeiture of the Bank Guarantee was in accordance with the policy approved by the Pollution Board in its meeting dated 09.03.2009. He contended that the Appellate Authority committed error while holding that the forfeiture of the Bank Guarantee to the tune of Rs. 12.25 lacs is void. He invited our attention to the observations of the Appellate Authority in paragraph (9) of the impugned order and the concluding paragraph thereof. According to the Learned Sr. Counsel, there is internal contradiction between the observations of the Appellate Authority and hence the impugned order is liable to be set aside. He submitted that the Appellate Authority failed to appreciate that the action of the HSPCB was in accordance with the directions of the three Member High Powered Committee constituted by the Apex Court. He urged, therefore, to allow the Appeal and set aside the impugned order.

13. *Per contra*, Learned Counsel for the Respondent submitted that the HSPCB had no legal authority to ask for Bank Guarantee from the Respondent nor had power to forfeit any part thereof. He further submitted that the Respondent had furnished the Bank Guarantee under compulsion and at the most it could be treated as security for due compliance of the directions to install RO/Nano filtration system as per the earlier direction of the HSPCB. He argued that the Respondent, in fact, installed the RO/Nano filtration system as directed by the HSPCB. The due compliances were verified by the authorized officer of the HSPCB and as such, forfeiture of the 25% of Bank Guarantee was uncalled for. He further contended that there

was some delay in installation of the RO/Nano filtration system due to delay on part of the concerned dealers of the said system to deliver the goods and arrange for the installation thereof. He argued, therefore, that the forfeiture of the part of the Bank Guarantee amounts to penal action without legal authority and without any reasonable basis for the same. Hence, he supported the impugned order.

14. Having considered rival submissions and the pleadings of the parties, we are of the opinion that the real controversy falls within narrow compass. The controversial issue involved may be stated as follows:-

“Whether, in the facts and circumstances of the present case, HSPCB could have legally forfeited 25% of the Bank Guarantee amount and hence the impugned order is unsustainable” ?

15. At the threshold, it is worthwhile to note that the HSPCB called upon the Distillery to furnish Bank Guarantee of Rs. 50.00

lacs as a commitment for commissioning of RO/Nano filtration system as per the target specified in this behalf. The direction asking the Respondent to furnish the Bank Guarantee, was issued by the HSPCB in accordance with the recommendations of the three Member High Powered Committee constituted by the Apex Court in order to monitor the time bound programme for commissioning of RO/Nano filtration system in the plant of the Distillery of M/s Haryana Organics like that of all the other Distilleries in the State of Haryana, to achieve zero discharge. The Directions may be reproduced as below : -

“the committee decided that the HSPCB will direct the unit (Respondent) to submit a time bound programme for completion of the installation of RO/Nano filtration system along with the Bank Guarantee of Rs. 50.00 Lacs as a commitment for commissioning of RO/Nano filtration system as per the targets to be specified by HSPCB in the direction. The unit will be visited jointly by CPCB and HSPCB in December, 2007 for verification of the compliance”

(Emphasis supplied by us)

16. On plain reading of the aforementioned direction of the three Member High Powered Committee, it is manifestly clear that the Bank Guarantee was sought as a commitment for commissioning of the RO/Nano filtration system in accordance with the time bound programme that the Respondent - Distillery was required to submit to the HSPCB. In other words, the purpose to seek the Bank Guarantee of Rs. 50.00 lacs was to ensure installation of the RO/Nano filtration system within the time frame as per the programme. Obviously, as and when the compliance was made by the Respondent (Distillery), the purpose of the Bank Guarantee could be treated as accomplished. It is clear, therefore, that the continuation of the Bank Guarantee after due compliance of the installation of RO/Nano filtration system was not required. For, the purpose was to obtain security by way of the Bank Guarantee to ensure the compliance.

17. Now, it is pertinent to note that the direction of the three Member High Powered Committee to the HSPCB and the consequential direction of the HSPCB to the Respondent (Distillery)

was not by way of mutual agreement between the parties. There is no forfeiture clause provided under any terms agreed between the parties i.e. HSPCB and M/s. Haryana Organics. It is well settled that unless there is forfeiture clause specified in the bilateral agreement, no party is entitled to forfeit the security amount, after the compliance is made in accordance with the directions issued by the competent authority. Needless to say, HSPCB could not have unilaterally directed forfeiture of the part of such Bank Guarantee given by M/s. Haryana Organics.

18. Apart from absence of mutual contract between the parties, particularly, in the context of forfeiture clause, it cannot be overlooked that HSPCB acted under directions/guidelines issued by the three Member High Powered Committee appointed by the Apex Court in order to achieve zero effluent discharge by the Distilleries operating in the State of Haryana. It was necessary, therefore, that further directions ought to have been sought from the three Member High Powered Committee which could have perhaps got it vetted from the Apex Court, if at all any forfeiture was required to be done. On its own, HSPCB could not do so without concurrence of the three Member High Powered Committee.

19. Coming to the question of powers of HSPCB to give any direction under Section 33 – A of the Water Act, it is true, no doubt, that the provision commences with non-obstante clause and overrides any other provision contained in any other law. The section may be reproduced as follows, for the purpose of ready reference, in order to properly interpret the same:-

“Section 33 A. – Power to give directions. – Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.”

Explanation. – For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct –

- (a) the closure, prohibition or regulation of any industry, operation or process; or*
- (b) the stoppage or regulation of supply of electricity, water or any other service.”*

(Emphasis supplied by us)

20. Functions of the State Board have been stated in Section 17 of the Water Act. As per Clause 17(1)(l)(i) function of the State Board shall be to make, vary or revoke any order for prevention, control or abatement of discharges of waste into streams or wells. One of its functions is also to require any person concerned to construct new systems for the disposal of sewage and trade effluent or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution [(17)(1)(l)(ii)]. It is under the said provision that HSPCB could have directed M/s Haryana Organics to install the new

RO/Nano filtration systems to ensure zero discharge of effluents. In “M.C. Mehta Vs. Union of India” (2004) 6 SCC 588 it is observed:

“Though the Government has power to give directions, that power should be used only to effectuate and further goals of the approved scheme, zonal plans, etc.; and the land vested under the Scheme or reserved under the plan should not be directed to be used for any other public purposes within the area envisaged thereunder. Public interest has to be understood and interpreted in the light of the entire scheme, purpose and object of the enactment.”

21. The State Board has power to enter premises of the units and carry out inspection. As provided under Section 23 of the Water Act, the State Board has power to grant consent to operate on condition as it may impose. It may also refuse such consent for reasons to be recorded in writing. It appears that when consent to operate is granted, the State Board has to specify the conditions which the unit is required to comply with. It is only when the State Board decides to refuse such consent that there is duty cast to record reasons in writing. Under Section 27(2), the State Board has power to review any condition imposed under Section 25 or Section 26 by giving notice for making any reasonable variation of or revoking any such condition imposed while granting the consent to operate.

22. All the above referred provisions of the Water Act would indicate that the State Board has powers to impose additional conditions apart from the conditions which were imposed while

granting the consent to operate any industrial unit. It is further significant to note that under Section 30 of the Water Act, State Board has power to carry out certain works, if such work has not been executed by the person concerned within specified time, and recover the expenses from the person concerned as arrears on land revenue or of public demand. We may reproduce Section 30 for the purpose of ready reference in order to demonstrate the nature of powers available to State Board.

“Section 30 Power of State Board to carry out certain works. – (1) Where under this Act, any conditions have been imposed on any person while granting consent under section 25 or section 26 and such conditions require such person to execute any work in connection therewith and such work has not been executed within such time as may be specified in this behalf, the State Board may serve on the person concerned a notice requiring him within such time (not being less than thirty days) as may be specified in the notice to execute the work specified therein.

(2) If the person concerned fails to execute the work as required in the notice referred to in sub-section (1), then, after the expiration of the time specified in the said notice, the State Board may itself execute or cause to be executed such work.

(3) All expenses incurred by the State Board for the execution of the aforesaid work, together with interest, at such rate as the State Government may, by order, fix, from the date when a demand for the expenses is made until it is paid, may be

recovered by that Board from the person concerned, as arrears of land revenue, or of public demand.”

So also, the State Board has power to make application to the court under Section 33 for restraining apprehended pollution of water in streams or wells. Thus, if there was any urgency to ensure installation of the RO/Nano filtration system, to ensure zero effluent discharge, there was no hurdle in the way of HSPCB to execute such work and recover the expenses from M/s Haryana Organics in accordance with the above provision.

23. If we read all the relevant provisions together with Section 33 – A of the Water Act, it is clear that State Board has power to issue any direction to secure performance of its functions under the Water Act. It is imperative that the directions to be issued by the State Board must have reasonable nexus with due performance of its functions under the Water Act. The Bank guarantee was obtained from M/s Haryana Organics in order to ensure due compliance of the directions to install RO/Nano filtration system for the purpose of securing zero discharge of the industrial effluents. In our opinion, the Bank Guarantee was sought to achieve particular purpose and if any deficiency was noticed by the HSPCB, till the removal of such deficiency, the Bank Guarantee could have been renewed by extending validity thereof.

24. In our opinion, the Bank guarantee or any part thereof could not be forfeited unilaterally without there being any specific term incorporated under any mutual agreement. We must not

overlook the very purpose of demanding Bank guarantee from any industrial unit, trading firm, contractor, etc. The sole purpose is to secure due compliance of the terms and conditions which are mutually agreed by the parties. In the present case, neither there was mutual agreement as such nor was any direction issued by the HSPCB to M/s Haryana Organics to ensure compliances in the exercise of power available under Section 30 of the Water Act. The direction was given by HSPCB to furnish the Bank Guarantee as per the guidelines issued by the three Member High Powered Committee nominated by the Apex Court. Under the circumstances, HSPCB had no legal authority, power and competence to forfeit any part of the Bank Guarantee furnished by M/s Haryana Organics.

25. For the sake of argument, we may assume that HSPCB had the power to give direction to forfeit Rs. 12.25 lacs out of Bank Guarantee amount of Rs. 50 lacs. Even so, such direction cannot be issued without following due procedure as contemplated under the Water (Prevention and Control of Pollution) Rules, 1975. Rule 34 requires State Board to serve concerned person with a copy of the proposed direction and to give an opportunity of hearing. Section 34 may be reproduced in order to understand the procedure that is required to be followed by State Board before execution of the proposed direction.

“Section 34: Directions

(1) Any direction issued under section 33-A shall be in writing.

(2)XXXXXXXXXXXXXXXXXXXXXXXXXXXX

(3)The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.”

(emphasis supplied)

26. We find that HSPCB did not comply with the due procedure as envisaged in Rule 34 (3) of the Water Rules. For this reason too, the forfeiture of 25% of the Bank Guarantee furnished by M/s Haryana Organics was illegal and improper. We do not find any substantial internal contradiction between the observations of the Appellate Authority in paragraph (9) of the impugned order and the concluding paragraph thereof. We may state here that the Appellate Authority categorically held that forfeiture of Rs. 12.25 lacs was arbitrary and even demand of Bank Guarantee had no basis. The Appellate Authority held that demand for the Bank Guarantee was coercive, unjust and unreasonable. Still, however, the Appellate Authority made passing observation that the HSPCB may reconsider the matter in order to satisfy apprehension of M/s Haryana Organics about the basis and quantification of Bank Guarantee. However, it was further observed that if M/s Haryana Organics had any grievance about the forfeiture, it can again approach the Appellate Authority on that issue because imposition of the Bank Guarantee showed that the HSPBC had been very unkind to M/s Haryana Organics. The observations in paragraph (9) of the impugned order cannot be

branded as final finding of the Appellate Authority, though, the observations are unhappily worded.

27. The Appellate Authority took note of the fact that installation of RO/Nano filtration system was done by M/s Haryana Organics and as such the directions had been duly complied with. What appears from the record is that previously M/s Haryana Organics was using molasses as raw material for distillation of rectified spirit. The use of molasses was, however, discontinued at subsequent stage and the Distillery switched over to use of grains as raw material for production of rectified spirit. It is obvious that the pollution level was much controlled due to the change of the raw material. In this view of the matter, and particularly, after due installation of the RO/Nano filtration system by M/s Haryana Organics, the forfeiture was uncalled for.

28. Cumulative effect of the forgoing discussion is that the forfeiture of part of the Bank guarantee by HSPCB, was without any legal basis and arbitrary. We do not find, therefore, any merit in the present Appeal filed by the HSPCB. We do not, however, find it proper to impose any cost on the Appellant (HSPCB) in as much as M/s Haryana Organics had adopted dilly-dallying tactics and had not followed the time bound programme as per the directions of the HSPCB.

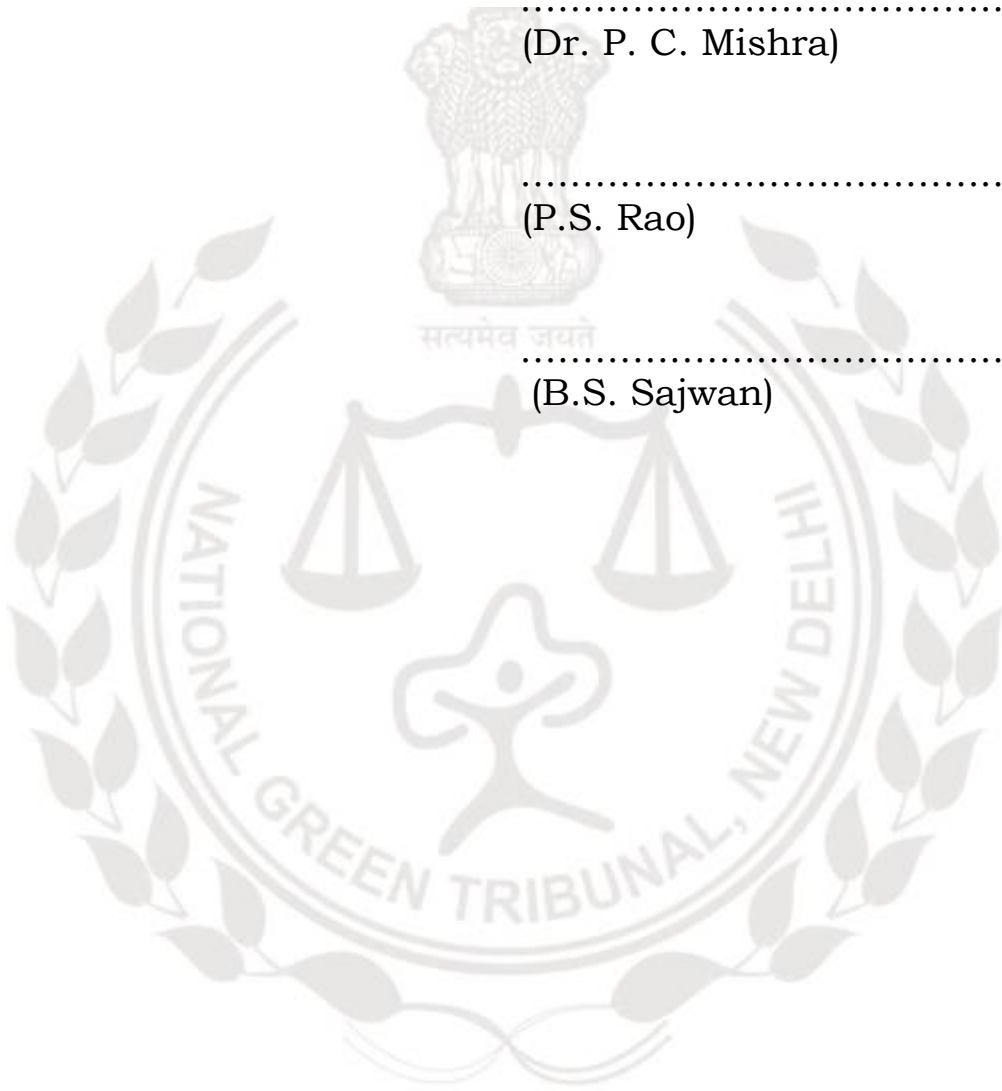
29. In the result, the Appeal is dismissed with no order as to costs.

....., JM
(V. R. Kingaonkar)

....., EM
(Dr. P. C. Mishra)

....., EM
(P.S. Rao)

....., EM
(B.S. Sajwan)



NGT