

PROCEEDINGS OF THE PERSONAL HEARING HELD BEFORE THE GOA STATE POLLUTION CONTROL BOARD ON 08/01/2018; IN THE MATTER OF SHOW CAUSE NOTICE BEARING NO. 1/25/17-PCB/LD-95 DATED 30/11/2017.

Ref: 1) Show Cause Notice No. 1/25/17-PCB/LD-95 dated 30/11/2017.

2) Order dated 13/12/2017 passed by the Hon'ble High Court of Bombay at Goa in WP/1092/2017.

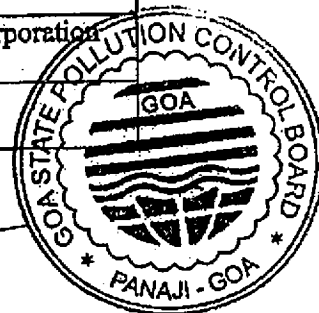
3) Order dated 27/12/2017 passed by the Hon'ble High Court of Bombay at Goa in WP/1143/2017.

4) M/s. South West Port Limited reply dated 28/12/2017.

This proceeding is being conducted with reference to the Show cause notice referred to (1) above. The Authorised representatives of M/s. South West Port Limited are being personally heard before the Goa State Pollution Control Board at its 130th (Special) meeting held on 08/01/2018 (Today).

The following Members of the GSPCB are present for today's personal hearing;

Sr. No.	Name and Designation
01	Mr. Ganesh Budhu Shetgaonkar, Chairman
02	Director, Dte. of Industries, Trade & Commerce was represented by Darshana Narulkar, General Manager (DIC)
03	Mr. S.T. Nadkarni, Chief Engineer, Water Resource Dept was represented by N. Vaz, ASW CPO
04	Mr. Prasanna Acharya, Director, Dte. of Mines and Geology
05	Mr. Shawn Brian Martins, Panch Member, Village Panchayat Calangute
06	Mr. Shubham Chodankar, Corporator, Corporation of the City of Panaji
07	Ms. Unnati Sahastrabhudhe, Panch Member, Village Panchayat Velgum
08	Mr. Rajsingh Rane, Councillor, Mapusa Municipal Council
09	Mr. Sanjay Naik, Panch Member, Village Panchayat Sanvordem
10	Mr. Savio Messias, President, Travel and Tourism Association of Goa
11	Mr. Nikhil Dessai, Director, Goa Tourism Development Corporation was represented by Sachin A. Gore
12	Mr. Levinson Martins, Member Secretary



The following Authorised representatives of M/s. South West Port Limited are present before the Board for today's personal hearing;

Sr. No.	Name of the Representatives of M/s South West Port Limited
01	Advocate Devidas Pangam
02	Mr. R.R. Patra
03	Mr. Anthony Fernandes
04	Mr. Nitin Tiwari
05	Mr. Prasad Rane
06	Mr. Ajay Ray
07	Mr. Vitthal Jadhav

Letter of authority in this behalf is taken on record and is enclosed herewith.

At the outset the Member Secretary informed the members as follows;

The Board had issued a Show Cause notice dated 30/11/2017 to M/s South West Port Ltd (copy enclosed) to show cause as to why the renewed Consent to Operate Order dated 21/07/2017, (copy enclosed) granted by the Board to the unit, for handling of Coaking coal/coal, limestone and steel slabs, should not be revoked for handling an excess amount of coaking coal in violation of the conditions as contained in the said Consent to operate order and further, for submitting false data in Form V. The unit was further directed to show cause as to why a bank guarantee of Rs. 5 lakhs for shifting a CAAQMS station should not be forfeited by the Board on account of delaying and disobeying of the Boards directions to shift the station, by the unit.

Vide the said Show cause notice, the unit was directed to show cause as above by 06/12/2017. The unit was further put to notice that failure to show cause satisfactorily as above would result in forfeiture of the Bank guarantee and issue of directions of suspension/closure of all operations including cargo handling at Berth no. 5A & 6A.

M/s South West Port Ltd. approached the High Court of Bombay at Goa vide WP/1092/2017 seeking a direction to the GSPCB to extend the time granted by it for replying to the Show Cause Notice.



The High Court vide order dated 13/12/2017(copy enclosed) has recorded the statement of the GSPCB that it had decided to grant two weeks time more to the Petitioner to file its reply. It also noted that the GSPCB would give a personal hearing to M/s South West Port Limited.

This issue was earlier discussed before the Board at its 128th Meeting held on 07/12/2017. In terms of the decision taken by the Board at its 128th meeting and in terms of the order of the Hon'ble High Court dated 13/12/2017, the Board vide letter dated 15/12/2017 (copy enclosed) informed SWPL that they were granted a further period of two weeks time to file a reply to SCN dated 30/11/2017. In terms of the decision taken by the Board at the 128th meeting, M/s South West Port Limited was further directed to submit a bank guarantee of one crore to the Board.

M/s South West Port Ltd. filed WP/1143/217 opposing the imposition of 1 crore bank guarantee on it by the GSPCB vide its letter dated 15/12/2017. The High Court vide order dated 27/12/2017 passed in the matter (copy enclosed) accepted the statement of GSPCB that until it disposes off the SCN issued to the petitioner, GSPCB will not insist upon the Petitioners providing the Bank Guarantee of Rs. 1 crore. In reference to SWPL's request that if GSPCB's final order is adverse the same may not be given effect for a period of at least two weeks from the date of communication; the GSPCB statement that it is open to the petitioners to make such a request during the course of the personal hearing and the GSPCB will make suitable orders thereon has been recorded.

The Board is now in receipt of a reply dated 28/12/2017 (copy enclosed) from SWPL, to the SCN dated 30/11/2017.

Vide letter dated 3/1/2018 the Member Secretary has directed the authorized representatives of M/s South West Port Limited to remain present before the Board today at 12:00 pm to submit their say on the Show cause notice dated 30/11/2017.

The Member Secretary submitted to the Board that in order to take a final decision on the Show Cause Notice dated 30/11/2017, issued to SWPL, the following issues were required to be decided and deliberated upon by the Board Members after hearing the submissions of the representatives of SWPL in this regard.

The issues are as follows;



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1) Whether M/s South West Port Limited has handled an excess amount of Coaking Coal / Coke during the year 2016-2017 over an above the limits stipulated by the Board in the renewed consent to operate orders issued by it?

2) Whether M/s South West Port Limited has consistently delayed and disobeyed the Boards Direction to install a CAAQMS, thereby rendering the Bank Guarantee of Rs. 5 Lakhs submitted by it towards the same liable to be forfeited?

3) Whether the date submitted by M/s South West Port Limited in Form V dated 21/09/2017 regarding handling of Coal / Coke is false?

This was agreed to by the representatives of M/s South West Port Limited. The Member Secretary requested the representatives of SWPL to address the Board with regard to the issues as above.

The representatives of M/s South West Port Limited, Advocate Devidas Pangam stated as follows;

1) Operation / handling of Coal / Coke at SWPL has not caused Air Pollution.

i) The Show Cause Notice dated 30/11/2017 has been issued to M/s South West Port Limited by the Board on the allegation that M/s South West Port Limited has exceeded the limit for handling Coal / Coke against the limit stipulated by the Board.

ii) The Show Cause Notice is silent on any violation of Ambient Air Quality Parameter of on the release of Air Pollutant / release of Air Pollutant beyond permissible limits that is caused due to this alleged excess handling. The Show Cause Notice does not allege that M/s. South West Port Limited has caused Air Pollution due to its operation.

iii) Any operation carried out beyond the permissible limit (of handling Coal / Coke) does not ipso-facto mean that the same is causing pollution beyond prescribed permissible limits.

iv) Reliance is placed upon certificates / monitoring reports and AAQM Reports enclosed along with the reply dated 28/12/2017 submitted by M/s South West Port Limited to the Board (at pages 12 to 20 of the reply). It is submitted that these Stack Monitoring reports, Noise Monitoring reports (both dated 13/09/2017 and 2 AAQM reports dated 01/11/2017 and



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01/12/2017 indicate that operations of M/s South West Port Limited are being carried out without causing any Air Pollution.

v) In the absence of specific date / scientific evidence that operation of M/s South West Port Limited is causing either Air or Water Pollution, the direction of Closure / revocation of Consent as threatened in the Show Cause Notice under reply would be disproportionate and accessibly severe.

Substantial cargo for M/s. South West Port Limited is directly loaded onto railway rakes from the vessels without stacking.

II) Action contemplated by the Board should be in Larger Public Interest.

i) It is submitted that the threat of closure of M/s South West Port Limited as stated in the Show Cause Notice, if implemented by the Board would not be in larger public interest as;

a) M/s South West Port Limited provides direct employment to 100 people and indirect employment to more than 350 people. Closure of the unit would result in these people being rendered unemployed.

b) Coke is transported to Bellary to operation of Industry. Stoppage of M/s South West Port Limited units would adversely affect the steel industry and its locals.

c) Stoppage of M/s South West Port Limited unit would result in severe loss to the railways and to MPT.

d) M/s South West Port Limited in the last financial year has paid 19.98 crores to the Income tax Department, 3002 crores to the Central Government as Custom Duty and a total of Rs. 3189 crores to local public Authorities. Stoppage of M/s South West Port Limited will result in loss to Government exchequer.

III) Judgements of Hon'ble High Courts relied upon.

i) (W.A. No. 360 of 1999) Pollution Control Board v/s Jadav Shop Works and Ors.

ii) (Air 1987 KARNATAKE 82) Chaitanya Pulvarising Industry and another v/s

Karnataka State Pollution Control Board and another.



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iii) (AIR 1995 ORISSA 84) Animal Feed Diaries and Chemicals Limited v/s Orissa

State (Prevention and Control of Pollution) Board and others.

The three Judgments basically state that for issuing of Closure to an Industry there has to be a specific finding that operation of the Industry is causing Pollution.

IV) On the aspect of whether, M/s South West Port Limited has handled excess amount of Handling Coal / Coke as stated in the Show Cause Notice under reply:

i) The MPT has submitted data to the GSPCB, allegedly stating that SWPL has handled excess coal / Coke for the financial year 01/04/2016 to 31/07/2017.

ii) The Consent to operate as mentioned in the Show Cause Notice has not granted for financial year, neither the quantity in the consent specified for a financial year.

iii) The Consent to operate is from 07/12/2016. Hence the premise of the Show Cause Notice is not correct.

iv) To a clarification from the Member Secretary as to details regarding handling of Coal / Coke by M/s South West Port Limited L from 01/04/2016 to 31/03/2017 and from 01/04/2017 to 31/04/2018, it is submitted that these details are not available at present and that the present submission is being made only in terms of the Show Cause Notice under reply.

v) It is submitted that the M/s South West Port Limited has in fact obtained a deemed Consent to operate for a handling quantity of 7.5 MT (prior to 21/07/2017) as the Application for Consent to operate submitted than was not decided within the statutory period of 4 months.

vi) In any case it is submitted that M/s South West Port Limited has not crossed the limit of 7.5 MT. It is further submitted that the Port handling capacity of MPT as a whole is 50MTA

V) As regard to alleged failure to install CAAQMS

i) It is stated that factually M/s South West Port Limited had installed the CAAQMS but the issue is that the Board desired the same to be shifted.

ii) M/s South West Port Limited had objected to this shifting on account of wrong siting and had communicated the same to the Board. However, the board did not reply.



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iii) However now that the Board had issued Show Cause Notice, M/s South West Port Limited has shifted the CAAQMS to the location as desired by the Board.

VI) With regard to the allegation that false data has been submitted in Form V by M/s South West Port Limited

i) It is submitted that Form V is required to be submitted as per the Environment Protection Rules and that the rules stipulated that Pollution levels, Water consumption and Raw material consumption is required to be submitted in Form V.

ii) Form V does not prescribe that quantity is required to be specified it only requires submission of details regarding Air and Water emission.

iii) It is submitted that the Form V submitted by M/s South West Port Limited in September, is not false and that the quantity of Coal handled was not required to be stated.

VII) Represented of the M/s South West Port Limited have also displayed a short Film indicating that activity of handling coal at M/s South West Port Limited facility is being carried out in a manner that controls pollution. A technical presentation in this regard has also been presented by M/s South West Port Limited representatives.

In view of the submissions made the representatives of M/s South West Port Limited requested that the Show Cause Notice dated 30/11/2017 be discharged.

The submissions made by the Authorized representatives of M/s South West Port Limited during the present Personal Hearing on the Show Cause Notice dated 30/11/2017 have been recorded herewith.

The Authorized representatives of M/s South West Port Limited are informed by the Board that a final decision on the Show Cause Notice dated 30/11/2017 would be taken by the Board after considering all the relevant material before it as well as after considering the written and oral submissions of M/s South West Port Limited in this regard.

M/s South West Port Limited representative requested for time to submit written submissions to the Board. However, they were requested to submit the same during the course of the day if desired. The Authorized representatives of M/s South West Port Limited are further



informed by the Board that an appropriate decision/order in this regard would be passed by the Board and communicated to M/s South West Port Limited.

Vide letter dated 08/01/2018, M/s. South West Port Limited has made the following requests;

i) In addition to the personal hearing granted to them today (8/1/2018), they wish to place on record the Written Arguments in the above matter. They requested for some time to do the same. It is, therefore, requested to give them about a week's time to file their Written Arguments.

ii) They further requested the Board that in case any adverse order is made, kindly implement the same for a period of four weeks. This request is made as per the Order of Hon'ble High Court dated 27/12/2017.

Same is taken on record.

Panaji

Date: 08/01/2018



Member Secretary
For the GSPCB



For South West Port Ltd.