

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

APPEAL NO.11/2023/EZ

IN THE MATTER OF:

M/S MAJHAULIA SUGAR INDUSTRIES PRIVATE LIMITED,
having its registered address at Industry, House,
15th Floor, 10, Camac Street, Kolkata-700017 &
having its Mill/Plant at P.O.-Majhulia, District-West
Champaran-845454,

.....Appellant(s)

Versus

- 1. CHAIRMAN,**
Bihar State Pollution Control Board
having its address at Pariesh Bhawan, N.S.B.-2, Patliputra,
Industrial Area, P.O.-Sadakat Ashram,
Patna-800010,
- 2. BIHAR STATE POLLUTION CONTROL BOARD,**
Served through the Member Secretary,
having its address at parish Bhawan, N.S.B.-2, Patliputra,
Industrial Area, P.O.-Sadakat Ashram,
Patna-800010,

.....Respondent(s)

Date of hearing: 31.03.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Appellant(s) : Mr. Kallol Basu, Adv. a/w
Ms. Sneha Singh, Adv. (in Virtual Mode)

For Respondent(s) : Ms. Amrita Pandey, Adv. for BSPCB (in Virtual Mode)

ORDER

1. Counter-affidavit dated 24.03.2023 has been filed by the Respondent Nos. 1 & 2, Bihar State Pollution Control Board.
2. Affidavit-in-reply dated 31.03.2023 has been filed by Appellant.
3. The Appellant in the present Appeal is seeking quashing of the order dated 07.12.2022 issued by the Bihar State Pollution Control Board, whereby the Appellant Unit has been directed to deposit

Environmental Compensation of Rs. 58,80,000/- (Rupees Fifty Eight Lakhs Eighty Thousand only).

4. The case of the Appellant, *inter-alia*, is that though the impugned order is based upon the water samples collected by the Bihar State Pollution Control Board from the Unit of the Appellant but prior to collection of the samples, notice as required under Section 21 of the Water (Prevention and Control of Pollution) Act, 1974, has not been given to him.
5. Along with the counter-affidavit of the Respondent Nos. 1&2, Bihar State Pollution Control Board, dated 24.03.2023, an Inspection Report of an inspection carried out on 30.05.2022 has been filed wherein it is stated that during inspection the Appellant Unit was found closed, however, the plant and equipment were being washed and the remaining effluents were being mixed with domestic sewage and were being discharged through Municipal Nalla. Samples of effluents were collected from meeting points and were sent for analysis to the State Board's Laboratory and the same were found to be beyond the prescribed standards. It is also stated that Environmental Compensation of Rs. 58,80,000/- (Rupees Fifty Eight Lakhs Eighty Thousand only) has been computed against the Appellant Unit which has been challenged in the present Appeal.
6. Learned Counsel for the Appellant submitted that at the time of inspection and taking of water samples, the Appellant was never informed and, in fact, the provisions of Section 21 sub-sections (2), (3), (4) & (5) of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'Water Act, 1974') were never complied with by the State Board. Section 21 of the Water Act, 1974 reads as under:-

“21. Power to take samples of effluents and procedure to be followed in connection therewith.—

—(1) A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well.

(2) The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible in evidence in a legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.

(3) Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub-section (1), the person taking the sample shall –

(a) serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analysed;

(b) in the presence of the occupier or his agent, divide the sample into two parts;

(c) cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;

(d) send one container forthwith,--

(i) in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or recognised by the Central Board under section 16; and

(ii) in any other case, to the laboratory established or recognised by the State Board under section 17;

(e) on the request of the occupier or his agent, send the second container;-

(i) in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or specified under subsection (1) of section 51; and

(ii) in any other case, to the laboratory established or specified under sub-section (1) of section 52

[(4) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3) and the occupier or his agent wilfully absents himself, then,--

(a) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (e) of sub-section (3) and such person shall inform the Government analyst appointed under sub-section (1) or sub-section (2), as the case may be, of section 53, in writing about the wilful absence of the occupier or his agent;

(b) the cost incurred in getting such sample analysed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent, as the case may be, as an arrear of land revenue or of public demand:

Provided that no such recovery shall be made unless the occupier or, as the case may be, his agent has been given a reasonable opportunity of being heard in the matter.]

(5) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under clause (a) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (b) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory

referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (d) of sub-section (3).”

7. We have seen the Inspection Report and we find that there is no mention therein that the mandatory provisions of sub-sections (3), (4) & (5) of Section 21 of the Water Act, 1974, have been complied with.
8. In this view of the matter, we find the impugned assessment of Environmental Compensation of Rs. 58,80,000/- (Rupees Fifty Eight Lakhs Eighty Thousand only) against the Appellant Unit to be absolutely illegal and arbitrary and in violation of the provisions of Section 21 of the Water Act, 1974.
9. We accordingly quash the impugned order dated 07.12.2022. However, it will be open for the Bihar State Pollution Control Board to proceed against the Appellant Unit for taking water samples and determination of Environmental Compensation in accordance with law.
10. In view of above, the Appeal No. 11/2023/EZ is accordingly disposed of.
11. I.As. if any, stand disposed of accordingly.
12. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

March 31, 2023,
Appeal No.11/2023/EZ
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