

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

.....

Appeal No.23/2023/EZ

IN THE MATTER OF:

**M/s Globus Spirits Limited
Represented through Prashant Kumar Singh,
Senior Vice President (works),
Having its registered and corporate office
At-F-0, Ishwar Nagar, Mathura Road,
New Delhi-110065 and
Having its plant at Khata No.1,9,3,69,11,35,21,
Khesra Nos.4219, 5284, 4143
Situated at Mauza-Dudhua, Village-Dudhua,
Jandaha, P.O.-Jandaha,
P.S.-Jandaha, District-Vaishali**

....Appellant(s)

Versus

**1. Bihar State Pollution Control Board
Through its Chairman,
Having its address at Parivesh Bhawan,
N.S.B.-2, Patliputra Industrial Area,
P.O.-Sadakat Ashram, Patna-800010;**

**2. The Chairman, Bihar State Pollution Control Board
Having its address at Parivesh Bhawan,
N.S.B.-2, Patliputra Industrial Area,
P.O.-Sadakat Ashram, Patna-800010;**

**3. The Member Secretary, Bihar State Pollution Control Board
Through its Chairman,
Having its address at Parivesh Bhawan,
N.S.B.-2, Patliputra Industrial Area,
P.O.-Sadakat Ashram, Patna-800010**

....Respondent(s)

COUNSEL FOR APPELLANT:

**Mr. Kallol Basu, Advocate a/w
Mr. Nilanjan Pal, Advocate**

COUNSEL FOR RESPONDENTS:

Ms. Amrita Pandey, Advocate for R-1 to 3

JUDGMENT

PRESENT:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

HON'BLE DR. ARUN KUMAR VERMA (EXPERT MEMBER)

Reserved On: - 3rd April, 2024
Pronounce On: - 5th April, 2024

1. Whether the Judgment is allowed to be published on the net? **Yes**

2. Whether the Judgment is allowed to be published in the NGT Reporter? **Yes**

Heard the learned Counsel for the parties and perused the documents on record.

2. This Appeal has been filed by the Appellant seeking quashing of the order dated 16.08.2023 passed by the Bihar State Pollution Control Board (BSPCB) granting 15 days further time to the Appellant to deposit Environmental Compensation amount of Rs.22,50,000/- (Rupees Twenty lakhs fifty thousand only) determined vide an earlier order dated 18.04.2023.

3. The Appellant Unit is stated to have been established in the year 2016 and is a Grain Based Distillery Unit with distillery capacity of 120 KLD having a co-generation power plant of 3.5 MV. It is further stated that the Unit was granted Consent to Establish (CTE) by the Pollution Control Board on 11.05.2016 laying down conditions therein for operation. Discharge Consent Order was granted vide letter dated 03.09.2019 with renewal for the period

01.07.2019 till 30.06.2024. Emission Consent Order has also been granted under the Air (Prevention and Control of Pollution) Act 1981. It is stated that on a complaint made by certain persons, inspection of the Appellant Unit was carried out on 15.02.2022 by the Bihar State Pollution Control Board in presence of the Complainants and the representative of the Appellant Unit. The Report was prepared on 25.02.2022 wherein it was stated that Liquid Discharge and Fly Ash was found inside and outside the premises and recommendation was therefore made for recovery of Environmental Compensation. Accordingly, an order was passed on 04.05.2022 proposing direction U/S 33A of the Water (Prevention and Control of Pollution) Act 1974 and U/S 31A of the Air (Prevention and Control of Pollution) Act 1981 as to why Environmental Compensation amounting to Rs.22,50,000/- (Rupees Twenty two lakh fifty thousand only) be not imposed and the Unit was granted fifteen days time to file its objection.

4. It is also stated that the Unit filed its objection/reply dated 06.06.2022 stating that the Unit is a Grain Based Distillery without any Liquid/Effluent Discharge. Effluents, if any, are in terms of protein which is used as bio-products and sold to parties. It is also stated that between August, 2021 and December, 2021 there were heavy rains and flood in the area on account of which there was a complete breach of the nearby embankment and water had entered the premises of the Unit as a result of which there was no production during that period and the Unit was closed, information of which was duly communicated to the District Magistrate,

Vaishali and District Industry Centre, Vaishali vide letter dated 16.08.2021. It is further stated that environmental parameters were re-established along with borewell and CPU inlet and outlet test reports through authorized labs, log sheet and Water Balance Report were also submitted.

5. It is stated that after almost ten months, an order dated 14.02.2023 was issued (page no.42 of the paper book) giving opportunity of hearing to the Appellant Unit on the reply previously submitted by the Appellant Unit dated 06.06.2022 and date of hearing before the Chairman, Bihar State Pollution Control Board was fixed for 21.02.2023. The representative of the Appellant Unit appeared in the hearing and proposed the date of inspection to be 6th March, 2023 or 7th March, 2023 to verify the progress of compliance of the Appellant Unit.

6. It is also stated that thereafter, the Board conducted an inspection of the Unit on 16.03.2023. It is further stated that the Appellant Unit vide its letter dated 13.04.2023 informed the Board that all steps had been taken by the Appellant Unit and there was no discharge from the Unit and they are maintaining Zero Liquid Discharge (ZLD) and also clarified that the effluents are of such type which are in terms of protein used for making Animal Feed Supplement as its bio-product.

7. It is stated that thereafter an order was passed on 18.04.2022 pertaining to environmental violations and fixing Environmental Compensation of Rs.22,50,000/- (Rupees Twenty two lakh fifty

thousand only) and thereafter, the impugned order dated 16.08.2023 was passed directing the Appellant Unit to deposit Environmental Compensation of Rs.22,50,000/-.

8. At the outset, we may note that the Appellant has not challenged the order dated 18.04.2023 which has been passed by the Bihar State Pollution Control Board under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Water Act, 1974) and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the Air Act, 1981) whereby Environmental Compensation of an amount of Rs.22,50,000/- (Rupees Twenty two lakhs fifty thousand only) has been imposed against the Appellant.

9. Section 33-B (c) of the Water Act, 1974 provides that any person aggrieved by directions issued under Section 33-A by a Board, on or after commencement of the National Green Tribunal Act, 2010 may file an appeal to the National Green Tribunal.

10. Section 33-B reads as under:-

“33-B. Appeal to National Green Tribunal.- Any person aggrieved by,-

(a)an order or decision of the appellate authority under section 28, made on or after the commencement of the National Green Tribunal Act, 2010 (19 of 2010); or

(b)an order passed by the State Government under Section 29, on or after the commencement of the National Green Tribunal Act, 2010 (19 of 2010); or

(c) directions issued under section 33-A by a Board, on or after the commencement of the National Green Tribunal Act, 2010 (19 of 2010), may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010 (19 of 2010), in accordance with the provisions of that Act.”

11. Right to Appeal is a statutory right conferred upon a party aggrieved by statute. The present Appeal has not been filed against the order dated 18.04.2023. The Appeal has been filed seeking quashing of the order dated 16.08.2023, Annexure-A-14 to the Memo of Appeal. A bear reading of this order would show that the Bihar State Pollution Control Board has as a matter of last indulgence granted 15 days time to the Appellant for depositing the Environmental Compensation determined on 18.04.2023 failing which appropriate action for recovery of the same will be initiated against it. This order has not been passed under Section 33A of the Water Act, 1974. In fact the order itself refers to the main order dated 18.04.2023 and states that the State Board in exercise of powers conferred by Section 33A of the Water Act had imposed Environmental Compensation of Rs.22,50,000/- on the Appellant for operating the Unit without complying with the consent conditions and it was directed to deposit the Environmental Compensation within a period of 15 days. Therefore, if any cause of action arose to the Appellant it was by the order dated 18.04.2023; the order dated 16.08.2023 does not give any cause of action to the Appellant to assail the same.

12. Mr. Kallol Basu, learned Counsel for the Appellant submitted that there were two inspections and that the Bihar State Pollution Control Board while passing the order dated 18.04.2023 failed to consider this aspect of the matter that the Appellant had carried out several remedial measures.

13. Ms. Amrita Pandey, learned Counsel for the Bihar State Pollution Control Board on the other hand submitted that the second inspection was conducted on 16.03.2023 which due to a typographical error has been mentioned as 06.03.2023 in the order dated 18.04.2023 and referring to the same the State Board has noted the findings recorded in the second Inspection Report which are as under:-

- “
- i. Only one sprinkling system has been installed for ash suppression.*
 - ii. Inside the unit premises at two three locations untreated effluents were found.*
 - iii. Leakage in machinery was observed at Production Process Area of the unit and this fact was acknowledged by the representative of the unit.*
 - iv. Internal roads of the unit were full of fly ash.*
 - v. Overhaul housekeeping was not good.*
 - vi. The progress work was observed to be slow.”*

14. Learned Counsel submitted that it is not that all the violations of the consent conditions were remedied by the Appellant nor is it the case of the Appellant that he has remedied all the lapses in the consent conditions and it is in these circumstances that the order

dated 18.04.2023 imposing Environmental Compensation of Rs.22,50,000/- was passed against the Appellant.

15. Be that as it may, the order dated 18.04.2023 is not under challenge before us and, therefore, we are not entering into the merits of that order.

16. With regard to non-challenge of the order dated 18.04.2023, Mr. Kallol Basu, learned Counsel submitted that the order dated 18.04.2023 would stand merged in the order of 16.08.2023 and, therefore, does not require to be challenged independently.

17. We are quite satisfied that such submission has been made by the learned Counsel only to be rejected since it is under the order of 18.04.2023 that the Environmental Compensation of Rs.22,50,000/- has been imposed against the Appellant. The order under challenge namely dated 16.08.2023 does not impose any Environmental Compensation, rather by way of indulgence, it only grants 15 days time to the Appellant to deposit the amount of Environmental Compensation imposed under the order of 18.04.2023. Even otherwise, we are satisfied that the doctrine of merger would not apply in this case since the order of 16.08.2023 has been passed by the State Board and not by a superior Appellate Authority in an Appeal against the order dated 18.04.2023.

18. The statute i.e. the Water Act, 1974, provides right of Appeal under Section 33-B (c) to the Appellant against an order passed under Section 33A of the Water Act, 1974 and the only order passed

under Section 33A of the Water Act is of 18.04.2023 and not 16.08.2023. The order dated 18.04.2023 having not been challenged by the Appellant, the present Appeal against the order dated 16.08.2023 is not maintainable and is accordingly dismissed.

19. Interlocutory Applications, if any, stand disposed of accordingly.

20. There shall be no order as to costs.

.....
B. AMIT STHALEKAR, JM

.....
Dr. ARUN KUMAR VERMA, EM

Kolkata
April 05, 2024
Appeal No.23/2023/EZ
MN

NGT