

Item No.4

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

[THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)]

**EXECUTION APPLICATION NO.03 OF 2023 (WZ)
IN
ORIGINAL APPLICATION NO.01 OF 2020 (WZ)**

Razzak Rajmohammad Baig & Ors.

.... Applicants

Versus

The District Collector, Ahmednagar & Ors.

.... Respondents

Date of Hearing : 08.08.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicants : Mr. Prashant Nawale, Advocate along with
Ms. Nichola Louis, Advocate

Respondents : Respondent No.1 in person through VC
Mr. Anirudha Kulkarni, Advocate for R7 and R8
Mr. Chetan Nagare, Advocate along with
Dr. Sudhakar Avhad and Ms. Siddhi Mirghe,
Advocates for R-12

ORDER

1. In pursuance of our previous order dated 13.07.2023, respondent No.12 – Project Proponent has filed an affidavit dated 02.08.2023, wherein our attention is drawn by the learned counsel for respondent No.12 to paragraph No.10 which states that the machinery in respect of the hot mix plant was purchased by respondent No.12 on 17.10.2016 and thereafter, it applied for Consent to Establish and Consent to Operate, but due to procedural lapses, the same were not issued by the MPCB within the stipulated time period, which resulted in causing loss to the business of the answering respondent. We made a query as to when the hot mix plant was set up, to which he replied that it was set up on 01.12.2016 and later on he stated that during the period from 2016 to

2018, it remained non-functional and the MPCB has made calculation of Environmental Damage Compensation (EDC) for the period from 01.12.2016 to 20.03.2018. Hence, the EDC calculation for the said period made by the MPCB is erroneous. We do not find the said dates mentioned in the affidavit dated 02.08.2023 that between 01.12.2016 and 20.03.2018, the hot mix plant of respondent No.12 was not in operation.

2. On a query made by us, it is further apprised and clarified by the learned counsel for respondent No.12 – Project Proponent that he had applied for Consent to Establish on 04.01.2017, but the same was never granted and with regard to Consent to Operate, he states that the same was applied on 03.03.2017 and for the first time, it was granted on 21.03.2018. Therefore, it is apparent that the Project Proponent – respondent No.12 proceeded to run the hot mix plant without Consent to Establish and Consent to Operate and taking plea for the same that he had applied, it is tried to be shown that it was failure on the part of the MPCB not to grant the same in time.

3. From the side of the applicants, rejoinder dated 08.08.2023 has been filed, wherein our attention is drawn to paragraph No.5. In the said paragraph, details have been given as to how analysis regarding air pollution was done of the hot mix plant of respondent No.12 and it has been tried to show by the said rejoinder that the total period for which the test was conducted should have been 24 hours run but it has been conducted for 4 hours and 13 minutes, which is direct allegation made against the MPCB.

4. Mr. Anirudha Kulkarni, learned counsel for MPCB is present before us and states that he may be allowed to file the reply to this allegation for which he is allowed two weeks' time.

5. From the side of respondent Nos.7 and 8 – MPCB, an affidavit dated 11.07.2023 has been filed wherein it is submitted that pursuant to

our order dated 18.04.2023, they have made calculation of the Environment Compensation to be levied from respondent No.12 to the tune of Rs.29,62,500/- for the period from 01.12.2016 to 20.03.2018.

6. Now, on the basis of above pleadings, we find that the question arises as to whether the hot mix plant of respondent No.12 during the period between 01.12.2016 and 20.03.2018 was in operation or not because learned counsel for respondent No.12 submits that it was not in operation while it is being rebutted by the learned counsel for MPCB that it was in operation. An affidavit dated 28.07.2023 has been filed by MPCB, wherewith copy of the minutes of the meeting dated 24.07.2023 is annexed. The relevant portion of the said minutes is as follows:

“The project proponent was applied for consent to establish vide UANNo.0000018801 dtd 4th Jan 2017. The said consent application was refused by the Board on dtd 03rd July, 2017 as unit has started production activity without obtaining consent from the Board. The board has also given an opportunity to the applicant as per said refusal order for appeal.

Again, unit has applied for consent to operate vide UAN No.0000022315 dtd 03rd March 2017 & Board has issued scrutiny letter on 22nd June, 2017 regarding inadequate pollution control system and operation of the unit since 2016 without obtaining consent from the Board and Board has refused the said application on 25th Jan 2018, as unit has not replied to the above scrutiny letter. The Board has also given the opportunity to the applicant as per refusal order for appeal.

The applicant has once again applied for consent to operate vide UAN No.0000044025 and the Board has granted consent to the applicant on dtd 21st March, 2018, which was valid up to 30th March 2020 and presently they have obtained valid consent to operate up to 30th March, 2026.

As per office record, the MPCB has calculated the environmental compensation from Dec.2016 to 20th March, 2018 amounting to Rs.2962500/-. Accordingly, MPCB has issued directions to the Project Proponent on dtd. 06th July 2023 for the submission of said environmental compensation within 07 days.

The personal hearing extended as per the Hon’ble NGT order dtd.13th July, 2023. For the said hearing, project proponent Shri B.J. Murdare, SRO MPCB, Ahmednagar, FO of RO Naashik were present”

7. We do not have any reason to disbelieve that the Project Proponent – respondent No.12's hot mix plant was not in operation during the period from 01.12.2016 and 20.03.2018 and that there was an error in computing the Environmental Compensation for the said period because an amount of Rs.29,62,500/- has been arrived at after giving hearing to respondent No.12.

8. Accordingly, we are of the view that the said amount of Rs.29,62,500/- needs to be directed to be deposited by respondent No.12 – Project Proponent with the MPCB within a month and we direct accordingly.

9. With respect to the claim of personal compensation made by the applicants, we had given direction by our previous order dated 13.07.2023 that the applicants would provide documentary evidence with respect to the crop yield prior to the setting up of the hot mix plant and the yield subsequent to the operation of the plant so that the amount of personal compensation could be calculated. The said direction has not been complied with by the applicants by submitting the necessary details. It is orally submitted by the learned counsel for the applicants that he may be granted last opportunity to comply with the said directions. We grant him two weeks' time and no more, by way of last opportunity.

10. From the side of respondent No.12 – Project Proponent, our attention is drawn to page 446 of the paper-book, which is a visit report dated 24.08.2017 by the officials of the MPCB, wherein it is recorded that the industry was not found in operation. On the basis of that, the learned counsel has argued that it stands indicative of the fact that on the aforesaid date, hot mix plant of respondent No.12 was not in operation. We are not in agreement with the line of argument that on the date of the visit made by the officials of the MPCB, since the hot mix plant of respondent No.12 was not functioning, that should lead us to

believe that the plant was not functioning for the entire period from 01.12.2016 to 20.03.2018.

11. Put up this matter for next consideration on 18.10.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 08, 2023
E.A.No.03/2023 (WZ)
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