

Item No.2

(Pune Bench)

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

[THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)]

**EXECUTION APPLICATION NO.03 OF 2023 (WZ)
(Earlier Original Application No.11 of 2023 (WZ))
IN
ORIGINAL APPLICATION NO.01 OF 2020(WZ)
WITH
I.A.NO.42 OF 2023 (WZ)**

Razzak Rajmohammad Baig & Ors.

.... Applicants

Versus

The District Collector, Ahmednagar & Ors.

.... Respondents

Date of Hearing : 13.07.2023

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

Applicants : Ms. Chandrika K. Katake, Advocate

Respondents : District Collector, Ahmednagar – R-1 is present
(through VC)
Sub-Divisional Officer, Ahmednagar – R-2 is present
(through VC)
Mr. Aniruddha Kulkarni, Advocate for R-7 and R-8
Agriculture Officer, Shevgaon – R-10 is present
(through VC)
Mr. Chetan R. Nagare and Dr. Sudhakar E. Avhad,
Advocates for R-12

ORDER

1. There are two aspects to be seen in the enforcement of the order of this Tribunal dated 20.05.2021 i.e. (i) in respect of the environmental compensation and (ii) with regard to the loss caused to the crop of the applicants which was required to be quantified.

2. The order dated 20.05.2021 passed in Original Application No.01/2020, execution of which is sought in this Execution Application, this Tribunal had directed the respondents i.e. MPCB that they will hear

the Project Proponent i.e. respondent No.12 before taking adverse action and that the applicants would be at liberty to furnish a set of papers to the MPCB and District Magistrate, Ahmednagar to facilitate compliance of the order.

3. Respondent No.12 – Project Proponent has filed additional affidavit dated 12.07.2023 wherein in paragraph 17, it has been mentioned that respondent No.12 had complied with all the guidelines prescribed by MPCB vide various visit reports from time to time. Respondent No.12 was served a letter dated 06.07.2023 by MPCB, communicating the calculation of environmental compensation to the tune of Rs.29,62,500/- for the period December, 2016 to 20th March, 2018, since the hotmix plant was not in operation due to being in process of obtaining the Consents and permissions from the concerned authorities. It is also stated in this affidavit that no opportunity was given by MPCB to respondent No.12 to file say and put the material facts on record before assessing the amount of environmental compensation.

4. The learned counsel for respondent Nos.7 and 8 – MPCB, Mr. Aniruddha Kulkarni is present before us, who has filed reply-affidavit dated 11.07.2023, wherein it is stated that in compliance of this Tribunal's order dated 18.04.2023, the calculation of environmental compensation to be levied from respondent No.12 – Project Proponent has been done for the period from 01.12.2016 to 20.03.2018, which comes to Rs.29,62,500/-, which has been done in accordance with the judgment and order passed in ***Paryavarán Suraksha***'s case. Mr. Aniruddha Kulkarni, learned counsel for respondent Nos.7 and 8 candidly admitted that no opportunity of hearing was given to respondent No.12 – Project Proponent while determining the environmental compensation of Rs.29,62,500/-, which is in violation of the directions given by this Tribunal vide order dated 20.05.2021, execution of which is being sought.

Therefore, we direct respondent Nos.7 and 8 – MPCB to give hearing to respondent No.12 – Project Proponent within two weeks. Thereafter, affidavit giving the details of correct amount of environmental compensation to be levied from respondent No.12, shall be filed before us by respondent Nos.7 and 8 – MPCB.

5. Now we take up the matter with regard to quantification of the loss caused to the applicants. In this regard, we had directed, by our previous order dated 18.04.2023, the District Collector, Ahmednagar – respondent No.1 with whom the Taluka Agriculture Officer – respondent No.10 was also present that they would determine the said amount within a period of seven days.

6. A short reply-affidavit has been filed from the side of respondent No.10 – Agriculture Officer stating therein that respondent No.2 – Sub-Divisional Officer, Pathardi had communicated on 31.03.2023 directing to submit a report as to whether any damage was caused to the crop of the applicants due to pollution of hotmix plant of respondent No.12. Accordingly, respondent No.10 visited the spot with Circle Agricultural Officer, Agricultural Supervisor, Agricultural Assistant and brother of complainant Riyaj Raj Mohammad Baig on 12.04.2023 and found that the hotmix plant, which was over gut no.40 at Warur (Kh), Taluka Shevgaon, was closed. However, the complainant's brother informed that due to smoke and dust, the crop standing on the agricultural field of the complainant had been damaged. During the inspection, cotton crops were found in dried condition since the season was over. Respondent No.10 had presented his report dated 12.04.2023 to respondent No.2 in response to the communication dated 31.03.2023 and had submitted therein that after taking into consideration the factual aspect, there could be loss of yield of crops of the applicants due to smoke and dust emitting out of the hotmix plant. But there was only possibility expressed of loss

to the crop. It is further mentioned that due to the cotton crop season being over, the loss caused to the crop of the applicants could not be quantified and it is mentioned that the same could be quantified in the next season by availing assistance of Agricultural Scientist from Agricultural University, which starts in June of every year.

7. From the above reply, we find that the same is defective and we direct that the defects be removed by the respondents within seven days.

8. From the above reply, we also find that respondent No.10 has expressed inability to quantify the loss suffered by the crop of the applicants on account of season of cotton crop being over and that suggestion is given that in the next season, the same could be quantified with the assistance of Agricultural Scientist from Agricultural University, but we failed to understand as to how such proposition has been given. In fact, in our estimation, the quantification of loss caused to the crop of the applicants is possible only when from the record it is shown by the applicants as to what used to be the crop yield prior to the setting up of the hotmix plant and subsequent to the closure of it, what was the crop output. Therefore, deficit crop be identified on the basis of it, and the damage could be quantified.

9. In this regard, not only the applicants are appropriate persons who could provide documentary evidence and based on that, calculation is possible to be done. We provide the execution applicants last opportunity in this regard of two weeks to provide the documentary evidence with respect to the crop yield prior to the setting up of the hotmix plant and the yield subsequent to the operation of the plant so that the said amount could be calculated.

10. Since the MPCB is directed to finalize the amount of environmental compensation after giving hearing to respondent No.12 – Project Proponent and two weeks' time has been allowed to them, one week is

granted to respondent No.12 to file rejoinder, if any against the calculation which would be arrived by the MPCB as well as claim of the applicants.

11. Put up this matter on 08.08.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

July 13, 2023
E.A. NO.03/2023(WZ)
npj