

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

(By Video Conferencing)

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

Razzak Rajmohammad Baig & Ors. Applicants

Versus

The District Collector, Ahmednagar & Ors. Respondents

Date of Hearing : 18.04.2023

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

Applicants : Mr. Prashant Nawale, Advocate
Respondents : Respondent No.1 – District Collector, Ahmednagar
in person present
Mr. Aniruddha Kulkarni, Advocate for R-7 and R-8
Mr. S.B. Sanap, Advocate along with Mr. A.B. Karad,
Advocate for R-12

ORDER

1. From the side of the applicant, learned counsel Mr. Prashant Nawale has appeared.
2. We have perused Original Application No.01 of 2020 (WZ), in which the order dated 20.05.2021 was passed, execution of which is being sought in the present Execution Application. Earlier the applicants had filed Original Application No.11 of 2023 (WZ), which has been converted by us into present Execution Application. On perusal of Original Application No.01 of 2020 (WZ), we find that the main relief was with respect to direction to be issued to the Project Proponent i.e. respondent No.12 to close the operation of the hot-mix plant, which is stated to be in

operation since December, 2016 on Gat No.40/1 on the western side of it, adjacent to the land of the applicants, without obtaining the Consent to Operate from the respondent authorities i.e. Maharashtra Pollution Control Board (MPCB) and others. It has been further stated therein that huge effluent was emitted out of the said plant causing air and water pollution which affected the soil quality of the agricultural land and crops yield of the applicants as well as the other agriculturists in the surrounding area.

3. It was in this set of facts, the order dated 20.05.2021 was passed by this Tribunal directing the MPCB and District Magistrate, Ahmednagar to look into the grievance and take remedial action following the due process within three months.

4. The applicants have not filed service affidavit, hence we cannot hold the service on all the respondents to be sufficient. The learned counsel for the applicants states that he will be filing the service-affidavit by today itself. He, however, submits that the service has been effected on all the respondents.

5. Today, from the side of respondent Nos.7 and 8 – MPCB, learned counsel Mr. Aniruddha Kulkarni has appeared and states that the reply-affidavit has been filed wherein it is submitted that respondent No.12 – Project Proponent has been granted Consent to Operate on 12.03.2020 at Gat No.40 at Varur (K), Taluka Shevgaon, District Ahmednagar, which is valid upto 30.03.2026, copy of which has been annexed at Annexure-I to the reply-affidavit. He has further submitted that the officials of the answering respondents visited the plant on 05.02.2021 and found that Respondent No.12 had not provided cover to Raw Material Loading Section (4 hoppers) and only partially covered the screen conveyor belt. The Project Proponent did not provide water sprinkling at hopper for control of dust emission during raw material handling in the plant and

did not take care of regular cleaning and wetting facility in the premises as per the consent conditions and pursuant to that, issued proposed directions to respondent No.12 vide letter dated 17.02.2021 (Annexure-II to the reply-affidavit), which, according to the answering respondents, are as follows:

- “1. You have not provided cover to raw material loading section (4 hoppers);*
- 2. You have provided only partially cover to screen conveyor belt;*
- 3. You have not provided water sprinkling at hopper for control of dust emission during raw material handling in the plant.*
- 4. You are not caring regular cleaning & wetting facility as per consent in the premises is not provided.”*

We find that Annexure-II is not a direction issuing letter, but it is a show-cause notice issued to respondent No.12 asking them to show the reasons within seven days as to why legal action be not taken against them for the defects found in their plant, which are noted in that notice.

6. It is stated in the reply-affidavit that thereafter the personal hearing was given to respondent No.12 and interim directions were issued vide letter dated 03.09.2021, which are annexed at Annexure-III (page 134 of the paper-book), directing that respondent No.12 shall regularly operate and maintain the Air Pollution Control System so as to achieve consented norms and shall not cause any nuisance in the surrounding area and shall also submit Bank Guarantee of Rs.25,000/- within fifteen days. Further it is submitted that thereafter, a joint inspection of the plant in question was conducted by the answering respondent with the Sub-Divisional Officer, Pathardi on 16.02.2023 and made following observations:

- “i. Hot Mix Plant was not operated continuously, it is operated as per work requirement.*

- ii. *During visit, the Hot Mix Plant was not in operation.*
- iii. *In order to control air pollution, the industry has provided Raw Material Loading Section (4 hoppers) and conveyor belt covered with tin sheets, water sprinkling system provided at conveyor belt & hopper section. The industry is having 01 no. of tanker with capacity 5000 lit. (water storage capacity) for regular wetting of the premises. The industry has provided wet scrubber with stack of height 15.0 mtrs. to hot mix plant. The industry has planted bamboo & other trees around the hot mix plant and metallic road is provided as per consent condition.”*

7. Thereafter, an inspection was conducted on 14.03.2022, which was joined by one of the applicants Mr. Razzak Baig, Respondent No.12 - Project Proponent and the nearby farmers and it was found that during operation of the hot-mix plant, smoke and dust-flow had accumulated on crop in the complainant's field. The crop of half portion of the complainant's land was harvested while cotton crop was standing on the same in two acres of land. Dried leaves of bamboo trees were found lying in the complainant's land and smell of Asphalt was found in their field.

8. As regards noise pollution, the same was found within limit. It is further mentioned that Agricultural Officer, Shevgaon was requested to submit a report whether any damage had happened to the crops of the applicants' farm, but no reply was given.

9. From the above affidavit, it is clear that despite the applicants having asserted in their Original Application that the hot-mix plant of respondent No.12 was functional since December, 2016, no mention has been made with respect to the same in the reply-affidavit by the MPCB and it is stated in their affidavit that Consent to Operate was given on 12.03.2020 meaning thereby that the plant of respondent No.12 remained functional from December, 2016 to 2020 without Consent to Operate.

10. It is also clear from this affidavit that the Agricultural Officer was asked to assess the damage caused to the crops of the applicants but the same has not been done at his end.

11. From the side of respondent No.1 – District Magistrate, Ahmednagar, an affidavit dated 17.04.2023 has been filed, stating therein that the Taluka Agricultural Officer, Shevgaon, District Ahmednagar has been asked to submit a report as to whether there is damage to the crops of the applicants from the pollution of hot-mix plant of respondent No.12 and the said officer had stated that there could be loss of yield of crops due to the smoke and particles coming out of unit of respondent No.12. But when enquired as to why the loss has not been quantified, he is asking the Agricultural Officer, who was present with him during hearing and who is impleaded as respondent No.10, to directly speak to us and states that he may be granted seven days' time to quantify the loss caused to the applicants. We grant the same by way of last opportunity and direct him to file an affidavit on record within seven days from the date of uploading of this order.

12. From the side of respondent No.12 – Project Proponent, the learned counsel Mr. S.B. Sanap along with Mr. A.B. Karad, learned counsel has appeared and denied all the allegations made by the applicants against respondent No.12 by saying that it has started functioning from 18.06.2018 after having procured all the necessary permissions from concerned Authorities. He has also submitted that at all times, whenever inspections were made by the officials of the MPCB or the Joint inspections were conducted, no violations were noted and if at all any violations were there, they are taken care of adequately and the applicants are blackmailing the answering respondent in order to extract money from them. Their land is not adjacent to the land where this plant has been installed. The Consent to Operate dated 12.03.2020 granted to

respondent No.12 has also been annexed as Annexure-I to the affidavit of respondent Nos.7 and 8 – MPCB.

13. From the foregoing evidence, we find that the earlier Consent which was obtained was dated 21.03.2018, but it would reflect that respondent No.12 did not have any Consent to Operate since December, 2016 till 21.03.2018 and operated the said plant without any Consent to Operate and Consent to Establish, as these documents are not found on record. Therefore, we direct the MPCB – respondent Nos.7 and 8 to make calculation of environmental compensation to be levied from the Project Proponent – respondent No. 12, in terms of the period as per the judgment rendered in the case of **Paryavaran Suraksha**, within three weeks from the date of uploading of this order.

14. We also find that in the conditions of Consent to Operate dated 12.03.2020, it was one of the terms that particulate matter would not exceed 150 mg/Nm³ but we do not find any report with regard to particulate matter. Therefore, we further direct MPCB to submit a report with regard to the particulate matter.

15. With regard to the air pollution, which was analyzed on 28.03.2023 at 7.28 p.m., it was pointed out that report is annexed at page 158 of the paper-book, which shows that the sample was collected on 14.03.2023 at 10.00 a.m.to 18.00 p.m. i.e. for eight hours, which is not in consonance with the norms laid down in Schedule-VII of the Environment (Protection) Rules, 1986, which provides that PM₁₀ assessment should be made regarding quality for last 24 hours. Therefore, this report also is not believable on the basis of which it has been tried to convince us that the same was within limit. We, therefore, direct that the assessment shall be conducted afresh and report thereof shall be submitted before us within three weeks after uploading of this order.

16. We may also record here our displeasure that the respondent Authorities, who have appeared, despite our directions to take steps within three months in pursuance of our order dated 20.05.2021, do not appear to have made serious efforts to take steps.

17. Put up this matter for next consideration on 13.07.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

April 18, 2023
E.A. NO.03/2023 (WZ)
npj