Item No: 7 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

[Through Physical Hearing (with Hybrid Option)]

ORIGINAL APPLICATION NO.50 OF 2023 (WZ)

Shahu Shivaji Mokashi .... **Applicant**

Versus

M/s Appasaheb Nalawade Gadhinglaj Taluka
Sahakari Sakhar Karkhana Ltd. & Ors. ....**Respondents**

Date of Hearing : 19.09.2024

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

Applicant : None present

Respondents : Mr. Dattatray Devale, Advocate for R-1
Mr. Mukesh Verma, Advocate for R-2/MPCB
Mr. Aniruddha Kulkarni, Advocate for R-6

ORDER

1. The matter concerning in the present Original Application relates to pollution being spread by respondent No.1 - an Industry called M/s Appasaheb Nalawade Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd. ("Sugar Factory", for short), regarding which action taken report is submitted, which is at pages Nos.11 to 20 of the paper-book and with respect to this particular Industry, details of the violation are given at page 17, which are quoted hereinbelow :

"1. Existing ETP consists of following units.

S.No.	***Unit***
1	*Bar Screen*
2	*Oil and Grease Trap*
3	*Equalization Tank*
4	*Aeration Tank*
5	*Clarifier 1*
6	*Clarifier 2*
7	*Treated water sump (15 days storage*

	tank)
8	*Sludge drying beds*
9	*Emergency holding Tank*

2. The physical observation shows that effluent treatment plant equipments are not in working condition. They were informed to remove the bypass line provided for effluent.

3. The trade effluent was also stored in the unlined lagoon near the ETP and this may also join nala leading to Hiranyakeshi river during the rainy season.

4. The unlined lagoons (two numbers) were provided as 15 days' storage tank and filled with trade effluent mixed with rain water & informed to abandon the same.

5. No proper agriculture management plan was observed for utilization of treated trade effluent and hence the treated trade effluent joins surface drain leading to nala and Hiranyakeshi river.

6. Based on non-compliances observed in the past, MPCB has issued Proposed Directions on 29-12-2017."

2. Mr. Dattatray Devale, learned counsel representing respondent No.1 – Sugar Factory submitted that respondent No.2 – MPCB had issued directions vide letter dated 01.08.2022 under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981, which is annexed at pages 44 and 45 of the paper-book, noting therein the following non-compliances:

"1. The physical observation during the visit shows that effluent treatment plant equipments were not in working conditions.

2. You have provided bypass arrangements from the ETP and were instructed to remove all bypass arrangements during the visit.

3. During visit it was noticed that you have stored the trade effluent into the unlined lagoon near the ETP and this may join to near by nalla leading to river Hiranyakeshi during the rainy season.

> 4. *You have not provided 15 days storage tank. The provided two numbers of lagoons are unlined & during the visit were filled with trade effluent mixed with rain water.*
>
> 5. *You have not provided scientific agriculture management plan for utilization of treated trade effluent and hence the treated trade effluent joins surface drain leading to nala and Hiranyakeshi river."*

3. Learned counsel for respondent No.1 thereafter states that respondent No.1 Sugar Factory had submitted compliance affidavit before respondent No.2-MPCB. It is not clear from the record as to whether these directions were complied with by respondent No.1 or not and whether any response to this notice was given by them or not. Therefore, we want a clear reply in this regard from respondent No.1 to be submitted within two weeks from the date of uploading of this order.

4. Learned counsel for respondent No.1, during argument, has pointed out an affidavit dated 28.12.2023 submitted to this Tribunal, wherein title of the said affidavit is "*Affidavit in compliance of the order dated 22.09.2023 in Original Application No.50 of 2023 WZ*". In the said affidavit in paragraph No.3, it is stated that the Regional Officer, MPCB, Kolhapur had issued the Proposed Directions under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 about upgradation of ETP & compliance of the CREP-Guideline, Removal of Bypass, Providing of Complete Agriculture Management Plan for utilization of treated effluent before starting crushing season, by disposal of trade effluent stored in the unlined lagoons & not to start manufacturing activity till then etc. Thereafter, the Interim Direction dated 17-11-22 was issued by the MPCB (copy of which is not placed by respondent No.1 on record. Therefore, we direct learned counsel for respondent No.1 to produce a copy of the same on record for our perusal) and following steps were taken by the answering respondent :

"a) The production has not been started or undertaken after issuance of Interim Directions dated 17-11-2022. (Reference : Crushing Season Refusal of Permission vide Letter dated 20th April, 2023 on account of non-operation of Industry (Letter dated 20-04-2023 – Annex-D]

b) Since the Sugar-Unit was not operated during the Season 2022-23, the R.N.1 undertook removal of so-called By pass vide Letter dated 26th November, 2022 and hence not operated Bypass.

c) We have disposed of effluent in unlined lagoons after due treatment through irrigation. Photograph/s enclosed (Annexure-F)

d) Industry has already provided 15 days storage tank. Photograph is enclosed & marked as an Annexure-G)

e) We have already in the process of reparation of complete scientific agriculture management plan for utilization of treated effluent before starting this crushing season through an Agricultural Expert. (Copy of Appointment Letter of Expert is enclosed and marked as an Annexure-H)

f) We have given in writing assurance about not to start any manufacturing activity till compliance of the Interim Directions dated 17-11-2022. A copy of our written communication dated 25-11-2022 in favour of the Distillery is enclosed herewith & marked as an Annexure-I-1".

5. Learned counsel for respondent No.1 argued that this compliance was not taken into consideration by respondent No.2 – MPCB and yet, without giving an opportunity of hearing the amount towards EDC has been calculated by them to the tune of Rs.50,10,000 (i.e. EDC for Sugar Unit – Rs.38,10,000 plus EDC for Distillery unit – Rs.12,00,000, thus total Rs.50,10,000). In fact, respondent No.1 – Sugar Factory was never in operation during the crushing season 2022-2023.

6. In response, learned counsel Mr. Mukesh Verma, appearing for respondent No.2 – MPCB, states that they have not calculated even a single day for the period of 2022-2023 as is evident from the said calculation of EDC, it is being shown zero. When we enquired from to the learned counsel for

MPCB that when it appears from calculation of the EDC that the violation is being attributed to respondent No.1 for the period 2021-2022, 2022-2023 and 2023-2024 continuously for three years, how was it possible during violation i.e. 2021-2022, the industry was allowed to function for next two years, to which he states that he will have to seek instructions from the Department/MPCB. We allow him to submit clarification in this regard within two weeks from the date of uploading of this order.

7. Apart from the above, learned counsel for respondent No.1 is insisting that they have not been given an opportunity of hearing by the MPCB before arriving on the said amount of EDC, nor there is any evidence as to whether notices were sent for hearing to respondent No.1 and if yes, on which date and what was the mode of communicating the date of hearing. Due to lack of these facts, in the form of an affidavit, we deem it appropriate to direct respondent No.2 – MPCB to provide an opportunity of hearing to respondent No.1 within one month and re-calculate the amount of EDC and place it on record before us apart from the pleadings to be submitted before us on record.

8. From the side of respondent No. 6 – Environment Department, learned counsel Mr. Aniruddha Kulkarni has appeared.

9. Put up this matter for further consideration on 02.12.2024.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 19, 2024
O.A. No.50/2023(WZ)
npj