

Item No.8

(Pune Bench)

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

**Appeal No.05/2023(WZ)
I.A. No.127/2023(WZ)**

M/s Shahakar Maharshi Shivajirao Narayanrao
Nagawade SSK Ltd.

.....Appellant

Versus

MPCB & Ors.

....Respondent(s)

Date of hearing: 18.08.2023

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

Appellant : Mr. Sangramsingh R. Bhonsle, Advocate along-with
Ms. Samridhi S. Jain, Advocate and Associates
Respondent(s) : Mr. Aniruddha Kulkarni, Advocate for R-1 & 2/MPCB
Mr. Tanaji B. Gambhire, Advocate along-with
Mr. Vijay Mhaske, Advocate and Ms. Kajal Mandge,
Advocate, for Intervener

ORDER

1. Today one Mr. Sachin Sudamrao Pachpute has filed I.A. No.127/2023(WZ) praying therein to be impleaded as one of the respondents in the present appeal.

2. The learned Counsel for appellant has set up a ground mainly that the appeal, which has been filed against the impugned order dated 09.01.2023 passed by the MPCB, where-in reference is made of this Tribunal's Order dated 10.11.2022 passed in Original Application No.85/2022(WZ), in which the intervener is an original applicant. It is pointed out that in the said Original Application, there is no order directing the State PCB to levy penalty/compensation from the Project Proponent and yet it has been wrongly shown in that order that the same

is being passed in pursuance of this Tribunal's order dated 10.11.2022. Further, it is stated by him that this order should have been passed not only under the Water (Prevention and Control of Pollution) Act, 1974 but also under the Air (Prevention and Control of Pollution) Act, 1981 and Hazardous Waste (Management & Transboundary Movement) Rules, 2016.

3. The said Intervention Application is being vehemently opposed from the side of learned Counsel for appellant. The learned Counsel for appellant urges that the Intervenor/applicant does not have any *locus standi* to be impleaded as one of the respondents in the present appeal because according to his admission, the impugned order has not been passed pursuant to the order dated 10.11.2022 passed in Original Application No.85/2022(WZ). Moreover, this should also be treated to be one of the grounds for setting aside the impugned order because it shows non-application of mind on the part of the State PCB, in which it has been mentioned that the said order has been passed by them, in pursuance of this Tribunal's order dated 10.11.2022 passed in Original Application No.85/2022(WZ) when there was no such direction for the same.

4. We have verified from the Original Application No.85/2022(WZ), where-in we have gone through the order dated 10.11.2022, in which we find that it does not contain any direction issued from our side directing the State PCB to pass any kind of direction under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974. Therefore, as of now, we do not find any ground to allow this impleadment application. We find it appropriate to pass final order in this application at the time of final argument after taking into consideration the reply affidavit from the side of State PCB.

5. Later on we heard the arguments of learned Counsel for the parties finally in this matter.

6. This appeal has been preferred against the impugned order dated 09.01.2023 issued by the MPCB, where-by direction has been issued under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 read-with the Environment (Protection) Act, 1986 towards environmental compensation of Rs.84,70,000/- as per the NGT's Orders.

7. The learned Counsel for appellant has urged that reference in the impugned order is made of NGT's order dated 10.11.2022 passed in Original Application No.85/2022; Show Cause Notice of closure directions issued on 29.09.2022; proposal submitted by Sub-Regional Officer, MPCB, Ahmednagar vide legal action No.MPCB-Legal Actions-270122007; and directions received from HQ dated 06.01.2023.

8. Having drawn our attention to these references, it is submitted by the learned Counsel for appellant that there was no order passed by this Tribunal in Original Application No.85/2022 on 10.11.2022 giving direction to the MPCB to calculate the environmental compensation and levy the same from the Project Proponent/appellant. We have verified it from the record of Original Application No.85/2022(WZ) and found that there was no order passed by us on 10.11.2022 directing the MPCB to impose an environmental compensation. Therefore, the reference appears to be erroneous.

9. Thereafter, the learned Counsel for appellant has drawn our attention to the Show Cause Notice for closure direction issued on 29.09.2022, which is annexed at page no.119 of the paper book, in which, it is recorded that the same has been issued for non-compliance of various environmental enactments and reference is given thereof at serial

nos.1 to 7 under the head reference. By this notice, it was directed that the same should be replied positively within 7 days, failing which the production activity will be directed to be stopped forthwith and legal action would be initiated against it.

10. Thereafter, the learned Counsel for appellant has drawn our attention to page no.121 of the paper book, which is an order dated 29.09.2022 passed by the MPCB regarding forfeiting the Bank Guarantee to the tune of Rs.25 lakhs and it is clarified that on the same day, when the Show Cause Notice dated 29.09.2022 was issued, the above amount of Bank Guarantee was forfeited by the MPCB.

11. Thereafter, the learned Counsel for appellant has drawn our attention to page no.123 of the paper book, which is an interim direction dated 17.10.2022 issued by the Regional Officer, MPCB, Nashik, which contains four directions to be complied with and it was mentioned in it that if the appellant fails to comply with the same, the disconnection of electricity and water supply of the industry would be ordered. Having pointed out towards this interim direction, it is brought to our notice by the learned Counsel for appellant that compliance of this is a subject matter of Original Application No.85/2022(WZ), which is pending consideration, in which Vasantdada Sugar Institute (VSI), Pune has been directed to make calculation of environmental compensation to be levied from the Project Proponent and the matter is still under consideration.

12. The learned Counsel for appellant has also drawn our attention to page no.125 of the paper book, which is a reply dated 25.10.2022 submitted by the Project Proponent/appellant to the interim directions and thereafter, it also indicated that the renewal of consent to operate dated 08.11.2022 was granted to the appellant for 30 KLPD molasses

base distillery, which is of Red Category, which is annexed at page nos.127-129 of the paper book.

13. Thereafter, the learned Counsel for appellant has drawn our attention to page nos.138-139 of the paper book, which is a letter dated 11.11.2022 issued by the MPCB regarding renewal of consent for 3500 TCD sugar and 26 MW Co-generation unit, under Red Category.

14. Having drawn our attention to these documents, it is urged by the learned Counsel for appellant that on the one hand, Show Cause Notice was issued, which was adequately replied and pursuant to that, renewal of Consent to Operate was also granted by the MPCB and on the other hand, the impugned has been passed imposing penalty of an amount of Rs.84,70,000/-.

15. The learned Counsel for appellant has further argued that the document, mentioned at point no.3 in reference contained in the impugned order dated 09.01.2023, was never provided to the appellant, which is said to be the proposal submitted by the Sub-Regional Officer, MPCB, Ahmednagar. Further, it is urged by him that under reference at serial no.4 pertaining to directions received from HQ dated 06.01.2023 contained in the said impugned order was also not provided to the appellant. Therefore, without providing copies of these two documents, there was no opportunity to make submission before the MPCB to impose any environmental compensation to be levied as this will amount to violation of principles of natural justice.

16. As against this, we heard the argument of learned Counsel for respondent Nos.1&2/MPCB, who has drawn our attention to the contents of affidavit dated 23.02.2023 filed from their side, where-in he has drawn our attention to para nos.7&8 of the said affidavit, where-in, in para no.7,

it is mentioned that this Tribunal had directed constitution of a Committee vide order dated 29.09.2022 and in para no.8, reference is made of this Tribunal's order dated 10.11.2022 and in compliance with that, it is submitted by the learned Counsel that the answering respondent has assessed the Environment Compensation of Rs.84,70,000/-. We are not satisfied with the argument made by the learned Counsel for respondent Nos.1 & 2/MPCB because nowhere did we find in our order dated 10.11.2022 directing the MPCB to assess environmental compensation against the appellant, rather the process of calculation of the same is undergoing in Original Application No.85/2022(WZ), which is still pending. Therefore, we find that the very basis of passing the impugned order appears to be erroneous. Moreover, it is also clear that the documents, which are mentioned under reference in the impugned order, copies of the same were also not provided to the appellant. Therefore, the impugned order will also be treated to be in violation of the principle of natural justice because it was very much required that the copies of those documents should have been provided to the appellant and also with sufficient opportunity was required to be provided to the appellant to respond to them. If any violation was found to be there at the end of the Project Proponent/appellant, then only any penalty/environmental compensation could have been levied. However, the learned Counsel for respondent Nos.1 & 2/MPCB reiterates that the environmental compensation has been assessed for the violation during the period from 09.02.2022 to 17.11.2022 on the part of the appellant but we do not find it having been mentioned in the reply affidavit. Therefore, it cannot be presumed that the violations were of the said period in respect of above-mentioned amount, which has been assessed as environmental compensation to be levied from the appellant.

17. In view of above, we find it appropriate to set aside the impugned order and is accordingly set aside the same. Consequently, this appeal stands allowed.

18. We also made it clear that if any violations are found to be there on the part of the appellant, the MPCB would be at liberty to proceed against it in accordance with law.

19. Pending applications, if any, also stand disposed of accordingly.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 18, 2023
Appeal No.05/2023(WZ)
I.A. No. 127/2023(WZ)
P.Kr