

Item Nos.5 to 7

(Pune Bench)

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

Original Application No.32/2023(WZ)

Raju Alias Devavappa Anna Shetty & Ors.

.....Applicants

Versus

M/s Shri Dutt India Pvt. Ltd. & Ors.

....Respondents

WITH

Original Application No.69/2022(WZ)

Sunil Pharate, Sangli District Head of Swatantra Bharat Paksh

.....Applicant

Versus

State of Maharashtra & Ors.

....Respondents

WITH

Original Application No.114/2023(WZ)

Mr. Sunil Pharate, Sangali Dist. Head Swatantra Bharat Paksh

.....Applicant

Versus

Yashwantrao Mohite Krishna Sahakari
Sakhar Karkhana Ltd. & Ors.

....Respondents

Date of hearing: 06.09.2024

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

In O.A.32/2023(WZ)

Applicant : Ms. Shriya Awale, Advocate h/f
Mr. Asim Sarode, Advocate

Respondents : Mr. Dattatray Devale, Advocate for R-1/PP
Mr. Vilas Jadhav, Advocate for R-2/MPCB
Ms. Supriya Dangare, Advocate for R-3/SMKMC
Mr. Divyansh Gore, Advocate for R-4

In O.A.69/2022(WZ)

Applicant : Mr. Omkar Wangikar, Advocate

Respondents : Mr. Aniruddha S. Kulkarni, Advocate for R-1/Env. Deptt. & R-2/CPCB
Mr. Vilas Jadhav, Advocate for R-4 & 5/MPCB
Ms. Supriya Dangare, Advocate for R-7/SMKMC
Mr. Dattatray Devale, Advocate for R-8 & 16
Mr. Saurabh Kulkarni, Advocate for R-9 to 15
Mr. Aditya S. Desai, Advocate for R-17/AMC
Mr. Abhineet Pange, Advocate for R-18/IMC

In O.A.114/2023(WZ)

Applicant : Mr. Omkar Wangikar, Advocate along-with
Mr. Tanaji Gambhire, Advocate

Respondents : Mr. Dattatray Devale, Advocate for R-1/PP
Mr. Aniruddha Kulkarni, Advocate for R-2/Env. Deptt. & R-3/CPCB
Mr. Vilas Jadhav, Advocate for R-5 & 6/MPCB

ORDER

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1. From the side of applicants, learned counsel Ms. Shriya Awale holding brief of learned counsel Mr. Asim Sarode has appeared before us. By our previous order dated 14.05.2024, we had directed the applicants to file rejoinder to the affidavit filed by the respondent No.1- M/s. Shri Dutt India Pvt. Ltd. but we find that the same has not been filed till date.
2. From the side of respondent No.1- M/s. Shri Dutt India Pvt. Ltd., learned counsel Mr. Dattatray Devale has appeared.
3. From the side of respondent No.2-MPCB, learned counsel Mr. Vilas Jadhav has appeared.
4. From the side of respondent No.3-Sangli Miraj Kupwad Municipal Corporation, learned Counsel Ms. Supriya Dangare has appeared. By our previous order dated 14.05.2024, respondent No.3 was granted two weeks' time to file rejoinder affidavit to the reply affidavit dated 09.05.2024 filed by the respondent No.2- MPCB, wherein an EDC has

been re-calculated. At the initial stage, when the argument was being heard, no objection was raised from their side and now at the end, when we are giving dictation in the present matter, she submits that she may be allowed further two weeks' time to file the said rejoinder affidavit. By way of last opportunity, we allow the said time.

5. From the side of respondent No.4- Swapnapurti Sugar Ltd., learned counsel Mr. Divyansh Gore has appeared. In compliance with our previous order, he has served a copy of its reply affidavit upon the respondent No.2- MPCB, but we find that respondent No.2 has not filed any rejoinder affidavit against the same.

6. Argument of learned counsel Mr. Vilas Jadhav representing respondent No.2- MPCB has been heard partly in this matter. Regarding the respondent No.1, he has drawn our attention to page no.40 of the paper book, wherein it is recorded in the Joint Committee Report that the said industry indulged in violation of the cane crushing for the season 2022-23, which the respondent No.1 started the same from 28.10.2022 and ended on 14.03.2023 (total no. of days for which respondent No.1 operated the Industry in violation is 141).

7. When we enquired from the learned counsel for respondent No.2- MPCB as to where is the proof to prove that during the entire season, the respondent No.1 was in violation, nothing could be shown by him on record. But he states that there were several inspection conducted during these periods and several test reports of these periods are also there on record to prove that the respondent No.1 was in violation. But nothing could be shown by him at this stage.

8. With respect to the respondent No.4- Swapnapurti Sugar Ltd., the learned counsel for respondent No.2- MPCB has drawn our attention to

page no.43 of the paper book, wherein it is recorded that the said industry indulged in violation from 22.02.2023 to 05.03.2023 for about 12 days during trial period. Again query was made by us with respect to the same, nothing could be shown by him.

9. With respect to respondent No.3-Sangli Miraj Kupwad Municipal Corporation, he has drawn our attention to page no.224 of the paper book, which is a supplementary report of the Joint Committee and at page no.225 of the paper book, wherein it is recorded in tabular form that the violation by this Industry was started on 01.04.2020 and continued to violate till 48 months thereafter i.e. for 4 years, hence the periods of violations were calculated by the respondent No.2- MPCB to be 01.04.2020 to 01.04.2024. But with respect to the evidence that how they arrived on a calculation that the said Industry was in violation for the aforesaid period, nothing could be shown.

10. The learned counsel for respondent No.2- MPCB is directed to submit the said details in a tabular form showing therein the name of the industry along-with the serial at which they are shown as respondent in Column no.1; Column- 2 will be shown the period for which the violation was committed; and in Column- 3, evidence with respect to violation has to be adduced along-with the pagination in order to facilitate this Tribunal to arrive on a conclusion. These details shall be submitted to this Tribunal within a period of two weeks positively in respect of all these respondents and a copy of the same be served upon all other parties before the next date of argument.

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11. From the side of applicant, learned counsel Mr. Omkar Wangikar has appeared, who submits that in this case, separate Joint Committee

has been constituted, rather than the Joint Committee, which was constituted in Original Application No.32/2023(WZ), which has submitted its report.

12. From the side of respondent Nos.9 to 15, learned counsel Mr. Saurabh Kulkarni has appeared, who has filed reply affidavits from the side of respondent Nos.9 to 11 and 13 to 15. In all these reply affidavits, same grounds are raised regarding the pollution, which is said to be caused because of which fishes have died, is not wholly attributed to the answering respondent. In some cases, the place where the industry situated is far away from the place where the fishes were found to have died. It is also submitted that there is no reasoning given as to how they have arrived on a conclusion that for so many days, these industries were in violation.

13. From the side of respondent No.18- Islampur Municipal Council, learned counsel Mr. Abhineet Pange has appeared before us, who submits that he has sent us an e-mail dated 05.09.2024 informing therein that he is intending to file the Compendium of Documents, but the same is not possible to be e-filed because of the technical error on the website of NGT and a copy of the same has already been served upon all other parties. He further submits that the matter is under consideration before the Hon'ble Supreme Court also, which is in *Civil Appeal Diary No.2522 of 2023*, which has arisen out of the Judgment/Order dated 18.10.2022 passed by this Tribunal in Original Application No.74/2021(WZ), wherein compensation has been directed to be levied from the answering respondent for non-setting up of STP and it is stated by him that the Hon'ble High Court has passed a stay order therein. He also states that in the said Civil Appeal, three affidavits were directed to be filed by the Hon'ble Supreme Court before it. The last one was filed

before the Hon'ble Supreme Court on 30th August, 2024. Since he wants all the said reply affidavits to be brought on record before this Tribunal also with the reply affidavit to be filed from their side in this matter, delay has happened and he submits that he would be filing the same before this Tribunal within two weeks' time. We allow the said time by way of last opportunity.

14. From the side of respondent No.8 – Yashwantrao Mohite Sahakari Sakhar Karkhana Ltd and respondent No.16 – Yashwantrao Mohite Sahakari Sakhar Karkhana Ltd. (Distillery Unit), learned counsel Mr. Dattatraya Devale has appeared. Regarding the respondent No.16, he has drawn our attention to page nos.436-437 of the paper book, wherein it is recorded that EDC calculated to be levied from this respondent is Rs.1,16,40,000 (Rs. One Crore Sixteen Lakh Forty Thousand Only) and detailed report of the calculation is mentioned at Annexure- E at page no.482 of the paper book, wherein number of days for which this industry remained in violation are shown as 388 days from 13.07.2022 to 05.08.2023. Thereafter, he drew our attention to the Joint Committee Report, which is annexed at page no.172 of the paper book, wherein at serial no.4 in tabular form, in the column of Reported violations/non-compliances, it is recorded “Production beyond consented capacity. Not providing tertiary treatment facility at ETP. Discharge of untreated effluent into Khubi nalah”.

15. When we enquired from the learned counsel for respondent Nos.4 & 5- MPCB as to where is the evidence on record to show that the violations were continued by the above-mentioned industry for the aforesaid periods, no evidence could be shown by him and states that he would be providing in tabular form the said violations on the same pattern, which has been directed by us in Original Application

No.32/2023(WZ), within two weeks, not only about this respondent but also all other respondents, which are impleaded in the said Original Application.

16. From the side of respondent No.17 – Ashta Municipal Council, learned counsel Mr. Aditya S. Desai has appeared before us, who submits that he has already filed reply affidavit in this matter.

17. From the side of respondent No.7 – Sangli-Miraj-Kupwad Municipal Corporation, learned counsel Ms. Supriya Dangare has appeared, who submits that she has already filed reply affidavit in this matter.

18. During the arguments, it also transpired that while granting the Consent to Establish and Consent to Operate, there is essential condition that OCEM- a online monitoring system would be put in place by the industries, which is connected with the server of the MPCB so that the evidence with respect to violation can very easily be judged from this monitoring data. Therefore, we direct the MPCB to file the monitoring data, which must be available with them with respect to all the respondent industries, which are parties before us in the above-mentioned Original Application, within two months. We further direct that the data, which is relevant to the industry concerned, should be provided to the industry concerned also well in advance so that rebuttal against the same, if any, may be filed by these industries also.

19. The learned counsel for applicant is insisting that the MPCB has not submitted any report with respect to the direction issued by us in para no.10 of our previous order dated 06.05.2024 pertaining to steps to be taken at their end to ensure that no untreated waste water is allowed to be discharged in River Krishna. Therefore, we direct the MPCB to file reply in this regard also within two weeks.

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20. From the side of applicant, learned counsel Mr. Omkar Wangikar along-with learned counsel Mr. Tanaji Gambhire have appeared before us.

21. In this Original Application, only prayer is made about the closure direction to be issued against the respondent No.1-Yashwantrao Mohite Krishna Sahakari Sakhar Karkhana Ltd., which is also a party before us in the above-mentioned two Original Applications.

22. When we enquired from the learned counsel for applicant, as to whether the closure is prayed for Distillery Unit or with regard to the Sugar Unit, he has clarified before us that it pertains to Distillery Unit's closure. He has also admitted before us that the date of cause of action has arisen in this Original Application on 04.08.2023 and 05.08.2023, while in earlier Original Application No.69/2022(WZ), the cause of action has arisen on 12.07.2022 i.e. the said industry had indulged in violation by polluting the same river water.

23. From the side of respondent No.1-Yashwantrao Mohite Krishna Sahakari Sakhar Karkhana Ltd., learned counsel Mr. Dattatray Devale has appeared, who submits that reply affidavit has already been filed from its side in this matter.

24. From the side of respondent No.2-State Environment Department and for respondent No.3-CPCB, learned counsel Mr. Aniruddha Kulkarni has appeared.

25. None has appeared from the side of respondent No.4-The Collector, Sangli.

26. From the side of respondent Nos.5 & 6-MPCB, learned counsel Mr. Vilas Jadhav has appeared.

27. Registry is directed to list all these matters for final hearing on 23.01.2025.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 06, 2024
Original Application No.32/2023(WZ)
along-with other connected O.A.s.
P.Kr