

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

**Original Application No.101/2023(WZ)
I.A. No.208/2023(WZ)**

Nagesh Vinayak Dhamale

.....Applicant

Versus

MPCB through its Member Secretary & Ors.

....Respondent(s)

Date of hearing: 10.10.2023

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

Applicant : Mr. Viraj Pawar, Advocate

Respondent(s) : Ms. Manasi Joshi, Advocate for R-1 & R-2/MPCB
Mr. Yashwant Dhanagave, Advocate for R-3/MWRRRA
Mr. Shivshankar Swaminathan, Advocate for R-4/PCMC
Mr. Soumitra Gokhale, Advocate for R-5/PP

ORDER

1. In compliance with our previous order dated 03.10.2023 in para no.11, we had directed the amendment to be brought about by adding the name of respondent No.5/Project Proponent. For that I.A. No.208/2023(WZ) had been moved by the applicant, which was found defective by the Registry. But today, it has been apprised that the defects has been removed and the same has been allotted number i.e. I.A. No. 208/2023(WZ) and its copy could not be downloaded due to technical issue of server at NGT. The said application, which has been sent to us through email, a copy of that has been downloaded and the same has been placed before us. The other parties have no objection to this application being allowed, hence we allow this I.A. and direct that the amendment be incorporated in the present application by adding the name of respondent No.5/Project Proponent.

2. By our previous order, we had directed the applicant to file rejoinder affidavit against the affidavit filed by the respondent Nos.1 & 2/MPCB and the respondent No.5/Project Proponent, the same has been filed by the applicant, which is dated 09.10.2023, a copy of which is said to have been served upon all other parties.

3. This order is being passed in continuation of the earlier order dated 03.10.2023, where-in, in para no.6, we had made it clear that the learned counsel for applicant is confining his relief only to the point that the Project Proponent has not obtained Consent to Operate and therefore, the same being violation of the mandatory terms and conditions, the Project Proponent should be proceeded against in this regard and there was no other relief claimed.

4. In this regard, the submissions, which were made earlier by the learned counsel for respondent Nos.1 & 2/MPCB orally, have now been placed on record before us by filing an affidavit dated 06.10.2023, where-in it is submitted that the number of days during which there was violation on the part of Project Proponent is considered from 20.01.2020 to 07.11.2022. The date i.e. 20.01.2020 has been taken to be the date when the Completion Certificate was issued for the project in question and the date i.e. 07.11.2022 is the date when the Project Proponent had applied for Consent to Operate i.e. one day prior to the application for Consent to Operate. Therefore, the total number of days of violations comes to 1023 days, out of which MPCB vide Circular dated 29.03.2023 exempted the period of COVID i.e. from 01.04.2020 to 31.03.2021. Therefore, out of 1023 days, 365 days are deducted then number of days of violation stand at 658 days, which amount to 1.80 years for the purpose of calculation of penal fees. After applying the formula for calculation of the penal fees for Red Category projects, the details of

which are given in para no.8 and the figure of the said penal charges stands at Rs.11,26,712/-, which is being rebutted by the learned counsel for applicant, who has filed rejoinder affidavit dated 09.10.2023, in which he has stated that the date from which the violations should be counted, should be the date of installation and commencement of the STP i.e. 01.10.2019 and the end date should be 29.03.2023, when the show cause notice was issued to the Project Proponent. Based on this, he has given calculation in para no.3 of the rejoinder affidavit and has calculated total number of days of violation to be 910 days i.e. 2.4 years and has arrived at penal fees to be levied from the Project Proponent to be Rs.15,58,219.17/-.

5. We are not in agreement with the objection made by the learned counsel for applicant in regard to the date of violation to be computed from 01.10.2019 because that was the date of installation of the STP, which might not have been brought in operation till the Commencement Certificate was issued because unless the occupants start residing in the building, the pollution would not happen, therefore, the date of Completion Certificate for STP being issued in favour of respondent No.5 should not be taken to be the date from which the violation is to be treated to have began.

6. As regards the date of conclusion till when the violation should be treated to be there, we are not convinced with the submission made by the learned counsel for applicant that the date of issuance of show cause notice i.e. 29.03.2023 should be the date when the show cause notice was issued to the Project Proponent, which is annexed at page no.122 of the paper book, which was replied by the Project Proponent, which is at page no.123 of the paper book.

7. We are in agreement with the view expressed by the learned counsel for respondent Nos.1 & 2/MPCB saying that the application for Consent to Operate was moved by the Project Proponent on 08.11.2022, therefore, one day prior to that is being taken to be the date up to which the violation should be taken in this case because show cause notice was issued only as a process to complete the issuance of the consent and whatever infirmities were noted and were directed to be removed, the same were removed immediately by the Project Proponent.

8. We are in agreement with the view expressed by the learned counsel for respondent Nos.1 & 2/MPCB and accordingly, hold that the total penal fees leviable from the respondent No.5/Project Proponent stands at Rs.11,26,712/, is right calculation in our estimation. It is also stated in the affidavit of the MPCB dated 06.10.2023 in para no.10 that the said amount has already been levied from the Project Proponent.

9. Thereafter, we tried to know from the learned counsel for respondent Nos.1 & 2/MPCB, as to whether any calculation is made with respect to the EDC (Environmental Damage Compensation) on account of the non-functioning of the STP, to which the learned counsel for MPCB states that the STP was operational right from the day when it was set up. Thereafter, we enquired from the said learned counsel, as to whether there was Online Monitoring System put in place, that was one of the conditions in the Consent to Establish, to which it is responded orally that the same was put in place but no record has been placed before us showing that the same was put in place and it was functional throughout the period since its installation.

10. The learned counsel for respondent Nos.1 & 2/MPCB states that this fact would be verified and in case the Online Monitoring System is

not found to be functional, based on the scrutiny of the record, appropriate EDC would be calculated and levied from the Project Proponent after giving an opportunity of hearing. This task would be completed within a period of one month from the date of uploading of this order.

11. In view of the submission made by the learned counsel for respondent Nos.1 & 2/MPCB, we dispose of this application with the direction that in case any violation is found to be there in non-functioning of the Online Monitoring System, the amount of EDC shall be levied from the respondent No.5/Project Proponent within a period of one month from the date of uploading of this order and report in this regard shall be submitted to the Registry of this Tribunal within a period of one week thereafter.

12. All pending applications, if any, also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

October 10, 2023
Original Application No.101/2023(WZ)
I.A. No.208/2023(WZ)
P.Kr