

Item No. 3

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 118/2022(WZ)

Mr. Sandeep S. Shete

.....Applicant

Versus

M/s. Gayatri Cold Storage & Ors.

....Respondent(s)

Date of hearing: 02.02.2023

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

Applicant	:	Mr. Omkar Wangikar, Advocate
Respondent(s)	:	Mr. Asim Sarode along-with Mr. R.B. Mahabal, Advocates for R-1/PP Mr. Aniruddha Kulkarni, Advocate for R-2/Env't. Dept. Ms. Manasi Joshi, Advocate for R-3/MPCB Mr. Kunal Patil, Advocate for R-4/KZSDUS Ltd.

ORDER

1. This application has been filed with the prayer that Respondent No. 3/MPCB be directed to close the industry of Respondent No. 1/PP with immediate effect as they are operating the industry without valid consent; an expert Committee be constituted to quantify the environmental losses.
2. The brief facts of this case are that the Applicant is a businessman who is working for the protection and conservation of nature and environment. The Respondent No. 1 is running a cold storage unit, which is engaged in milk packaging activities by the name "Gayatri Cold Storage" constructed at Survey No. 105/3, Dhere Bungalow, Manjari Bk., Haveli, District- Pune. The Respondent No. 4/Kolhapur Zilla Sahakari Dudh Utpadak Singh Ltd.-Kolhapur is the main supplier of milk for

packaging purpose to the Respondent No. 1 and Respondent No. 4 has mentioned the name of Respondent No. 1 as “processed and packed by” on its Gokul Milk packet, distributed in the market. The Respondent No. 1 is running the said facility without permission from the MPCB and is discharging the untreated toxic effluent outside the premises. The Respondent No. 1/PP received the Consent to Operate from the Respondent No. 3/MPCB on 20.11.2019 for the period up to 30.04.2021 but it violated various consent conditions stipulated there-in. For those violations, a show cause notice was issued by Respondent No. 3/MPCB to Respondent No. 1/PP on 13.09.2021 to which reply was never submitted by the Respondent No. 1/PP.

3. Thereafter, Respondent No. 3 issued the final refusal of consent under Section 27 of the Water (Prevention and Control of Pollution) Act, 1974, Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Hazardous & Other Waste (M & TM) Rules, 2016 on 18.09.2021 for various non-compliances but in-spite of the said refusal, the Respondent No. 1 continued to run the unit without consent. The ETP of the Respondent No. 1 is not functional and is outdated. Various oral complaints were made by the Applicant against the Respondent No. 1/PP, to Respondent No. 3/MPCB. A written complaint was made on 16.12.2022 in this regard. The Respondent No. 3/MPCB had issued proposed directions to Respondent No. 1 on 19.12.2022, which are as follows:-

- “
- a. Respondent No. 1 is not operating ETP scientifically with all units and ETP has found in corroded manner.
 - b. Respondent No. 1 is discharging untreated effluents outside the industry premises.

c. Respondent No. 1 have not provided air pollution control system to the boiler and not provided monitoring facility as per CPCB guidelines.

d. Respondent No. 1 have not provided metering system to the bore well.”

4. Thus, the Respondent No. 1 is running its industrial unit illegally for more than 1 & half years. Hence, above prayers have been made.

5. This matter was first taken up on 03.01.2023 and notices were directed to be issued to the Respondents. Service affidavit has been filed by the Applicant, as per which service is sufficient upon all the Respondents.

6. From the side of **Respondent No. 1-M/s. Gayatri Cold Storage/PP**, a reply affidavit dated 02.02.2023 has been filed, where-in it is submitted that the Applicant is not residing at the address given by it as the same belongs to business rival and competitor of the Answering Respondent, who was bidding a tender against them for this work. As such, the applicant has suppressed this vital relevant fact. The Applicant has come with *mala fide* ulterior motive. The Answering Respondent is only storing the milk and packaging it. It has not a milk processing unit. Its capacity storage is 4,00,000 liters/day. The effluent arising out of it is from floor washing and cold storage/packing unit washings. The Answering Respondent has full-fledged ETP with installed capacity within 50 m³/day, which consists of primary + secondary + tertiary treatment, which is mentioned in Schedule-I of the ‘Consent to Operate’. The actual effluent generated is only 7 m³/day as such there is no overloading on ETP. The sewage generated is only 4 m³/day. The unit is using briquettes as fuel for boiler and has installed cyclone separator and has also provided for the sampling point for monitoring. During the period of

maintenance, the unit was using the treated waste water in their green house and fruits garden. The effluent from milk storage and packaging unit is not at all toxic. The milk enters effluent only when vessels are washed at the end of the day. The unit is fully biodegradable by aerobic treatment. Even by anaerobic treatment, 60% BOD reduction is achieved without use of electrical power.

7. The Answering Respondent has boiler of steam generation capacity of 300 kg/hr. The boiler unit is not operational for 24 hrs. The flue gases are discharged through 11m chimney which diffuses and discharges the emissions with impact on Ground Level Concentrations (GLC) within sustainable and acceptable limits. The net resultant GLC is also well within the National Ambient Air Quality Standards (NAAQS). The Applicant has not given any data to show that there is pollution or the air pollution control equipment is non-operational. The Answering Respondent has installed cyclone separators and that since the particulates are >100 micron in size, they get easily separated in this cyclone system itself.

8. No damage was caused to the environment. The effluent generated is 100% biodegradable and easily treatable even in conventional ETP. The ETP remains always functional and operative. The treated effluent is used within the premises. There is no complaint from any of the nearby residents about the present industry causing pollution.

9. The show cause notice issued, is not related to environment nor are they related to functioning of the ETP or the allegations made in the Original Application because following is contained there-in:-

“ 1) The Project Proponent has not submitted undertaking declaration of land cost.

- 2) *The Project Proponent has not submitted NOC from Central Ground Water Authority for extraction of ground water.*
- 3) *The Project Proponent has not submitted rational water budget in details.*
- 4) *The Project Proponent has not submitted Small Scale Industry (SSI) Registration.*
- 5) *The Project Proponent has not submitted BG of Rs. 25,000/- as per pervious consent conditions.”*

10. None of the above conditions contained in the said show cause relates to non-performance of ETP, damage to environment or pollution.

11. The Answering Respondent applied for the ‘Consent to Operate’ and paid the consent and penal fees for the past period as per the MPCB Circular dated 12.07.2021 (12.07.2021 appears to be wrongly mentioned as it should be 12.07.2022). The photographs which have been given of the ETP show that it is functional and contains the effluent under treatment.

12. The treated effluent is safe to use anywhere as BOD <30 mg/L. The MPCB officials after their visit of the site of Answering Respondent on 23.12.2022, issued a cause notice, which contains following:-

- “ 1) *The Project Proponent is not operating ETP scientifically with all units and ETP parts have found in corroded manner.*
- 2) *The Project Proponent is discharging untreated effluent outside the premise.*
- 3) *The Project Proponent has not provided air pollution control system to the Boiler and not provided monitoring facility as per CPCB guidelines.*
- 4) *The Project Proponent has not provided metering system to the bore well.”*

13. Pursuant to the said observation, the Answering Respondent had shown the ETP to be in operation. Since the hydraulic load is too less as against the capacity, it appeared to be non-functional. Mild-Steel components do get rusted and hence, are painted, coated with epoxy and parts are replaced every 3-4 years. The Answering Respondent took corrective action and complied with all the interim directions issued by the MPCB.

14. The MPCB officials again visited the site of the Answering Respondent on 04.01.2023 to check the compliance with their interim directions issued and thereafter being satisfied, the MPCB issued the renewal of 'Consent to Operate' dated 13.01.2023, which is valid up to 30.04.2027. MPCB has also collected the fine of Rs. 52,397/- as per Circular dated 12.07.2022 and that the unit of the Answering Respondent is always open to periodic inspection and checking by the MPCB.

15. From the side of **Respondent No. 3/MPCB**, a reply affidavit dated 01.02.2023 has been filed, where-in it is submitted that the MPCB had granted Consent to Operate to the Respondent No. 1 on 20.11.2019, which was valid till 30.04.2021. The Respondent No. 1 had applied for renewal of Consent (date of the application is not mentioned) but the same was refused by the Board vide letter dated 18.09.2021. The MPCB had received a complaint regarding discharge of untreated industrial effluent outside the factory of Respondent No. 1. Thereafter, officials of MPCB had visited the premises of Respondent No. 1 on 25.11.2022 and violations were found to have been done, which have already been reproduced by us while dealing the reply of Respondent No. 1. Pursuant to the said non-compliance, MPCB had issued direction vide letter dated

19.12.2022 to the Respondent No. 1, which have also been reproduced by us in the reply of Respondent No. 1. Thereafter, MPCB officials visited the site of Respondent No. 1 on 04.01.2023 and following observations were made:-

- “
- i). *During visit, trade effluent is sent to the ETP, which is consisting of the collection tank, manual scrapping arrangement, equalisation tank with chemical dosing(manually), aeration tank with diffused aerators, clarifier tank, intermediate tank / filter feed tank, tertiary pressure sand filter PSF and activated carbon filter ACF, sludge drying beds (2 nos.).*
 - ii). *The representative of Respondent No.1 informed that maintenance work of the ETP like pumps and pipes were replaced / repaired, instruments coloured for avoiding corrosion etc. was carried out on 2/1/2023; treated effluent is sent for their green house and fruit garden purpose.*
 - iii). *Respondent No. 1 Industry has installed one 300 Kg/H capacity boiler at site and same is found provided with cyclone type dust collector following by a stack of approx. 11 meter in height. The said stack is provided with porthole and platform.*
 - iv). *Respondent No. 1 has provided one magnetic flow meter at inlet raw water from one bore well; date of installation is 22/12/2022.*
 - v). *Respondent no. 1 representative informed that an application was made by the industry for obtaining NOC from CGWA.”*

16. Pursuant to the said compliances having been found to have been made by the Respondent No. 1, renewal of consent was allowed to the Respondent No. 1 13.01.2023, which was valid till 30.04.2027.

17. As regards charging of Rs. 52,397/- from the Respondent No. 1, considering lapse of days in obtaining of renewal of Consent to Operate from the MPCB, it is apprised that the same is charged by way of penal fees, which was as per Circular dated 12.07.2022 of the MPCB and it is orally clarified also by the learned Counsel for the Applicant that the same is not environmental compensation.

18. The learned Counsel for the Respondent No. 3/MPCB has admitted that a show cause notice dated 13.09.2021, which has been stated by the Applicant in para no. 8 of the Original Application, was issued from end to the Respondent No. 1, copy of which is neither placed on record by the MPCB nor by the Applicant, in that similar conditions were contained, as are contained in letter of final refusal of the consent dated 18.09.2021, annexed at page no. 25 of the paper book, which includes at condition no. 2 that the Project Proponent (PP) did not have NOC from the Central Ground Water Authority for extraction of ground water. Rest of the conditions are relating to land cost not being submitted, non-submission of rational water budget, non-submission of SSI Registration and non-submission of Bank Guarantee of Rs. 25,000/- as per previous conditions. Therefore, one of the conditions certainly would be treated to be a violation in our view.

19. In the light of the reply affidavit of the Respondent No. 1/PP as well as Respondent No. 3/MPCB, it is apparent that all the infirmities which were noticed at the site of the PP, were removed before issuing the renewal of Consent to Operate dated 13.01.2023, which is valid till 30.04.2027.

20. The learned Counsel for the Applicant in rebuttal has stated that the officials of the MPCB had made spot visit on 23.12.2022 and had

found that the PP was doing packaging of maximum quantity of 4,00,000 liters/day of milk.

21. The learned Counsel for the MPCB has obtained information from the MPCB and it has been apprised that the visit by the officials of the MPCB was made of the premises of Respondent No. 1 on 13.09.2021 in which it was observed that from May, 2021, the unit had started increasing the packing of milk from 2 lakhs onwards in violation of the terms & conditions granted.

22. We dispose of this application accordingly with the direction to the Respondent No. 3/MPCB that it shall calculate the environmental compensation from the date on which in May, 2021 the breach of the terms & conditions of CTE were committed by the Respondent No. 1/PP till 13.01.2023, as per the guidelines laid down by the CPCB within a period of one month and thereafter within one month, the same shall be deposited by Respondent No. 1 with the MPCB.

23. It would be advisable for the Respondent No. 3/MPCB to give hearing to the Respondent No. 1/PP as well as the Complainant while determining the compensation.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 02, 2023
Original Application No. 118/2022(WZ)
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