

**BEFORE THE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE, CHENNAI**

O.A. No. 27 of 2019 (SZ)

Kishore Kumar & Anr.

... Applicant

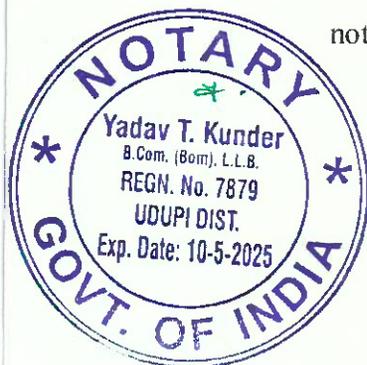
Vs

Union of India & Others

... Respondents

**OBJECTIONS FILED BY RESPONDENT No.11 TO THE ENVIRONMENTAL
COMPENSATION REPORT FILED IN OA 27 OF 2019.**

1. The Respondent No. 11 submits that this Application was filed by the Applicant in relation to the alleged environmental violations by three fish meal industries, including the Respondent No. 11 herein. The Hon'ble National Green Tribunal ("NGT"), Southern zone passed an Order dated 18.10.2019 and directed that a joint committee be constituted consisting of Karnataka Coastal Zone Management Authority, Karnataka ("KCZMA"), Central Pollution Control Board ("CPCB"), Karnataka State Pollution Control Board ("KSPCB"), the District Commissioner, Udupi District and District Magistrate, Udupi District to inspect the area in question and the industries and submit a factual report regarding the allegations made in this Application. Pursuant to an Order of this Hon'ble NGT dated 18.10.2019, a Joint Committee was constituted and the said Committee filed a report dated 13.01.2020 hereinafter referred to as "JC I".
2. The Respondent No. 11 submits that pursuant to the Order of this NGT dated 07.02.2020, the Joint Committee was directed to assess the Environmental Compensation in accordance with the guidelines given by the CPCB and file a report. Subsequently, the KSPCB issued an Environmental Compensation Report dated 19.03.2020, hereinafter called "The Report".
3. The Respondent No. 11 submits that an application was filed by Smt. Sugandhi Sekar, a resident of Udyavara village of Udupi. The same was taken on record by the NGT as O.A. No. 254 of 2020. The allegations contained in O.A. No. 254 of 2020 is nothing but a mechanical repetition of the allegations contained in this



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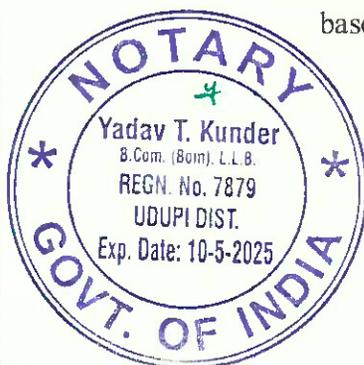

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Application filed by the Applicant herein who is also a resident of the same village. It is submitted that the OA No. 254 of 2020 is nothing but an attempt to harass the Respondent No.11 amongst others. However, vide Order dated 14.12.2020, the Hon'ble NGT in OA No. 254 of 2020 constituted a Joint Committee comprising of senior officials from the Ministry of Environment, Forest and Climate Change, CPCB, KSCZMA and KSPCB to inspect the same area and premises which were in question in OA 27 of 2019 and submit a factual report. Subsequently, a Joint Committee was constituted and a report was filed in OA 254 of 2020, hereinafter referred to as **JC-II**.

4. The Respondent No. 11 submits that it denies all the allegations made in Section 4.1 of the Report. The Respondent No. 11 submits that it is engaged in the business of production, distribution and supply of fishmeal and fish oil and is operating with valid consents under all the applicable laws.
5. It is submitted by the Respondent No. 11 that the Report in page number 4 has observed that owing to the alleged non-compliances purportedly committed by the Respondent No. 11 the KSPCB has estimated a total amount of Rs.29,06,250/- (Rupees Twenty Nine Lakhs Six Thousand Two Hundred and Fifty Only) as compensation for the following alleged non-compliances:
 - (a) Water consumption and Effluent Generations are exceeding the permitted capacity of consent as on 10.12.2019, as per the committee's observation.
 - (b) Non-compliance of treated effluents with respect to discharge standards from September 2018 to October 2018, as per the records of KSPCB.
 - (c) Not having NOC from the Ground Water Authority for drawing ground water as on 10.12.2019, as per the Committee's observation.
 - (d) Non Compliance to Hazardous & Other Waste Management Rules as on 10.12.2019, as per the Committee's observation.
6. It is submitted by the Respondent No. 11 that the allegations contained in Serial No.1 of the table at page 4 of the Compensation Report that the Water consumption and Effluent Generations are exceeding the permitted capacity of consent as on 10.12.2019, as per the committee's observation are denied as completely false, and baseless. It is submitted that the Respondent No. 11 has been diligent and cautious to



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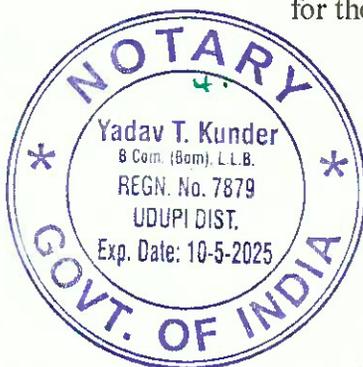
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comply with the consent orders and there has been no violation in regards to water consumption or effluent generation.

7. The Respondent No. 11 submits that as against the water consumption and water generation set out in JC 1 at page 17 the actual water consumption and water generation as per the records of the Respondent No.11 is set out in the table. The table has been attached herein as **Annexure No. 1**. Accordingly, the Respondent No. 11 submits that the fresh water utilisation is 53 KLD, which is well within the consented quantity of 170 KLD. Further, the Respondent No. 11 submits that for all other purposes it uses only treated water and has reduced consumption of fresh water. It is humbly submitted by the Respondent No. 11 that with regards to the water consumption for cooling water, the CFO had mentioned a limit of 70 KLD whereas the actual limit as per the logs maintained by Respondent No. 11 is 250 KLD. It is submitted that the water being utilised for cooling water is recycled water from its ETP and thus, Respondent No.11 has not consumed any excess water for this purpose and hence the question of any violation of consent limit as specified in JC I does not arise. Further, it has been observed in JC I in page number 17 at paragraph (k) that the CFO dated 29.09.2018 had permitted effluent generation upto a limit of 138 KLD whereas the actual effluent generated as per logs maintained by Respondent No. 11 was 282 KLD. It is humbly submitted by the Respondent No. 11 that during the months of November and December, 2019, as mentioned as per the logs maintained by the Respondent No.11 and as per CFO dated 21.05.2020 that the Respondent No. 11 had an ETP with a capacity of treating 400 KLD and thus, even if actual effluent generated by Respondent No. 11 was more than 282 KLD as alleged in the JC 1 at page number 17, the unit had sufficient ETP capacity to treat such effluents and thus the question of exceeding the permitted capacity does not arise in this instant case. Thus, it is submitted that the Respondent No.11 has not exceed its permitted consent for the purposes of water consumption and effluent generation.



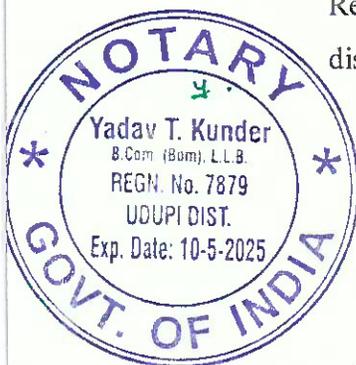
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8. The Respondent No. 11 submits that the allegations contained in the table in Serial No. 2, section 4.1 of the Compensation Report that it did not comply with the standards with respect to discharge of treated effluents from September 2018 to October 2018 is denied as untrue and false. It is submitted that the Report read with JC I at page 18 merely states that the said allegation is based on the KSPCB's records. It is submitted that the JC I and the Report do not contain information on the date of collection of sample or the contents of the specific analysis report indicating that the sample did not comply with the standards prescribed by KSPCB. It is submitted by the Respondent No. 11 that by not complying with the points mentioned above, the Respondent No. 15 are in violation of Section 21 of the Water Act. It is submitted that as per JC I at page 18, it is stated that the Respondent No. 11 was compliant with the discharge standards from January, 2017 to October, 2019. It is further submitted by the Respondent No. 11 that the JC II has examined the analysis report of the treated industrial effluent collected during the year 2020 and in January, 2021 and also examined the analysis report of the river samples collected at both the upstream and downstream of the Respondent No. 11's unit.
9. The Respondent No. 11 submits that at page 8 of the JC I report, the KSPCB has commented as follows "*that on verification of analysis report of treated effluents collected for the past six months by KSPCB, the treated effluent is meeting with the stipulated standards*". It is submitted by the Respondent No. 11 that it can be seen from the observations in JC I and JC II and the records maintained by the Respondent No. 11, the Respondent No. 11 has always been in compliance with the discharge standards as laid out by the KSPCB. It is thus submitted by the Respondent No. 11 that the Report and JC II has arbitrarily stated without providing the specific date of collection of sample, the laboratory analysis report and without giving a portion of the sample to the Respondent No. 11 that it has violated the discharge standards during the period September to October, 2018. Thus, it is submitted by the Respondent No. 11 that in addition to the violations committed by the Respondent No. 15 to Section 21 of the Water (Prevention & Control of Pollution) Act, 1974 ("**Water Act**") this allegation is denied not only as illogical and baseless but extremely unlikely. The Respondent No. 15 is put to strict proof of the same. Thus, it is submitted by the Respondent No. 11 that the question of any alleged non-compliance pertaining to discharge standards does not arise.



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10. The Respondent No. 11 submits that the KSPCB and the Joint Committee have failed to follow the procedure laid down under section 21 and section 22 of Water (Prevention & Control of Pollution) Act, 1974 with respect to the alleged non compliances in S. No. 1 and 2 of the table in section 4.1 of the Compensation Report. It is submitted that Section 21 of Water Act lays down the power and procedure to be followed while collecting samples. Section 21 of the Water Act reads as follows:

Section 21 - Power to take samples of effluents and procedure to be followed in connection therewith

(2) *The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.*

(3) *Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub-section (1), the person taking the sample shall-*

(a) *serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analysed;*

(b) *in the presence of the occupier or his agent, divide the sample into two parts;*

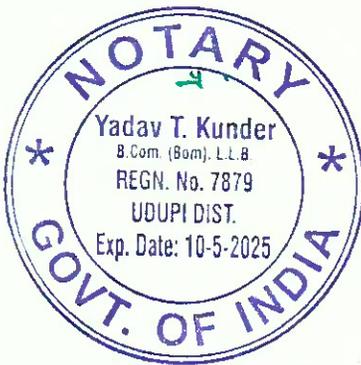
(c) *cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;*

(d) *send one container forthwith,-*

(i) *in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or recognised by the Central Board under section 16; and*

(ii) *in any other case, to the laboratory established or recognised by the State Board under section 17;*

(e) *on the request of the occupier or his agent, send the second container,--*



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- (i) in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or specified under sub-section (1) of section 51; and
- (ii) in any other case, to the laboratory established or specified under sub-section (1) of section 52.

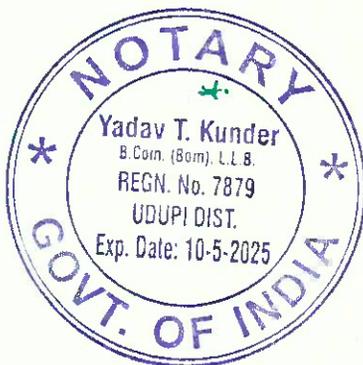
(4) When a sample of any sewage or trade affluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3) and the occupier or his agent willfully absents himself, then-

(a) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (e) of sub-section (3) and such person shall inform the Government analyst appointed under sub-section (1) or sub-section (2), as the case may be, of section 53, in writing about the willful absence of the occupier or his agent; and

(b) the cost incurred in getting such sample analysed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent, as the case may be, as an arrear of land revenue or of public demand:

Provided that no such recovery shall be made unless the occupier or, as the case may be, his agent has been given a reasonable opportunity of being heard in the matter.

(5) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under clause (a) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (b) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (d) of sub-section (3).



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11. The Respondent No. 11 submits that in violation of the provision of the Water Act as mentioned above, the KSPCB has not issued notice to the Respondent No.11, it has not collected the sample in the presence of the Respondent No. 11 nor has it provided a part of the sample to the Respondent No. 11. It is further submitted by the Respondent No. 11 that JC I and II Report have failed to set out relevant details, including whether it had sent the sample to the laboratory immediately, without any delay. It is thus submitted by Respondent No. 11 that the KSPCB are in clear violation of Sections 21 and 22 of the Water Act and the question of an alleged non-compliances cannot arise on account of a plethora of lapses on the part of the Respondent No. 15 and hence the question of levying an environmental compensation does not arise in the alleged non-compliances pertaining to S No. 1 and 2 in the table of section 4.1 of the Compensation Report.

12. The Respondent No. 11 submits that similar to the provision under Water Act as mentioned above, Section 11 of Environment Protection Act, 1986 ("EP Act") reads as follows:

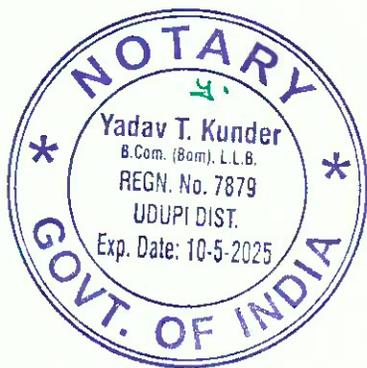
Section 11 - Power to take sample and procedure to be followed in connection therewith

(2) *The result of any analysis of a sample taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with.*

(3) *Subject to the provisions of sub-section (4), the person taking the sample under sub-section (1) shall--*

(a) *serve on the occupier or his agent or person in charge of the place, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;*

(b) *in the presence of (he occupier or his agent or person, collect a sample for analysis;*



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- (c) cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent or person;
- (d) send without delay, the container or the containers to the laboratory established or recognised by the Central Government under section 12.

(4) When a sample is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent or person, a notice under clause (a) of sub-section (3), then,--

(a) in a case where the occupier, his agent or person willfully absents himself, the person taking the sample shall collect the sample for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and

(b) in a case where the occupier or his agent or person present at the time of taking the sample refuses to sign the marked and sealed container or containers of the sample as required under clause (c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the samples, and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or recognised under section 12 and such person shall inform the Government Analyst appointed or recognised under section 13 in writing, about the willful absence of the occupier or his agent or person, or, as the case may be, his refusal to sign the container or containers.



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13. The Respondent No. 11 submits that no copy of the analysis reports with respect to samples collected by KSPCB or by the JC I has been served on the Respondent No. 11, which is gross violation of section 22 (2) of Water Act. Further, in the case of, ***In Delhi Bottling Co. Pvt. Ltd. and Ors. Vs. Central Board for the Prevention and Control of Water Pollution AIR1986Delhi152***, the Hon'ble High Court of Delhi has held as follows:

"Sub-section (2) of Section 21 states that the result of any analysis of a sample of any sewage or trade effluent taken under Sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of Sub-sections (3), (4) and (5) are complied with."

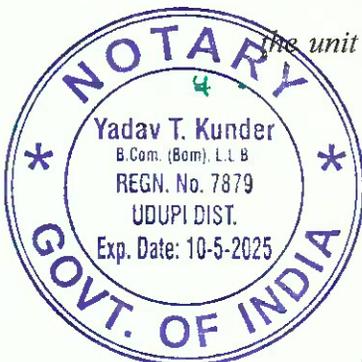
Further, in the case of ***Gauri Maulekhi Vs. Union of India and Ors. Original Application No. 486 of 2014 and M.A. No. 800 of 2014***, The Hon'ble Principal Bench of National Green Tribunal, New Delhi, vide para 25 has held that:

"p.25. Thus, it can very well be seen that for analysis results to be admissible in evidence in any legal proceedings the procedure as stipulated in the said provisions is to be followed. No scope for any mischief making the findings of the analysis contentious is left upon following such procedure. Moreover, what law requires has to be followed."

14. Therefore, it is submitted by the Respondent No. 11 that the alleged non-compliances in (i) and (ii) in toto cannot be relied upon as section 21, 22 of Water Act and section 11 of EP Act have not been complied with and thus, the question of non-compliance and environmental compensation does not arise.

15. The Respondent No. 11 submits that the allegations contained in Serial No. 3 in the table of section 4.1 of the Compensation Report that it had not obtained an NOC from Ground Water Authority is denied as baseless and false. It is submitted that the JC I in page no. 16 has stated as follows:

"The source of water supply for industrial use is open well and bore well. Whereas the unit has not installed flow meter for recording water consumption. Also the unit



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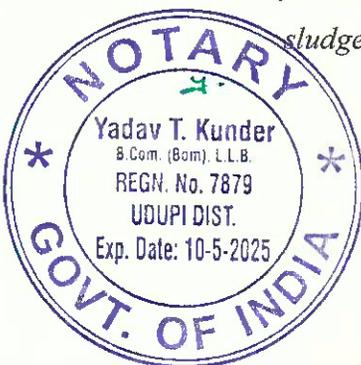
has not obtained NOC from the Karnataka Ground Water Authority (KGWA) for usage of groundwater for industrial purposes."

16. The Respondent No. 11 submits that it had sought for information under the Right To Information Act, 2005 by an application dated 18.09.2020 whereby the Respondent No. 11 was informed by the Public Information Officer, District Ground Water Office, Ground Water Directorate, Udipi, that the Udipi District Ground Water Office which was functional from 04.05.2017 has till date not given permission to any industry to use water from the well for any commercial purpose. However, as a matter of abundant caution and respecting the observation of the JC I constituted by the Hon'ble National Green Tribunal, Respondent No. 11 had sought for an NOC from the Karnataka Ground Water Authority ("KGWA") vide letter dated 21.05.2020 for usage of Ground Water for industrial purposes. However, KGWA have not yet responded giving clear directions. It is further submitted that the Respondent No. 11 had followed up with the KGWA again on 30.06.2021 and is awaiting for a response from KGWA..

17. The Respondent No. 11 submits that JC II at page No. 25 has also taken cognizance of the fact that Respondent No. 11 has applied to the KGWA in order to obtain an NOC. It is therefore, humbly submitted by Respondent No. 11 that the alleged non-compliance pertaining to non-obtaining of an NOC from KGWA cannot be made attributable on the Respondent No. 11. Thus, it is submitted by the Respondent No. 11 that the question on non-compliance does not arise.

18. The Respondent No. 11 submits that the allegations in page No. 4 of the Compensation Report that it did not comply with the Hazardous and Waste Management Rules is denied as false and baseless. It is stated in page number 19 of JC I as follows:

"q) The unit has provided storage area for storing Hazardous Waste Generated, but the same need to be upgraded with adequate area and spillage collection pits and free from water entry. The committee also noticed that Hazardous wastes such ETP sludge, oil waste etc. are stored in adjacent land in unscientific way causing soil



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contamination. The Hazardous Waste Authorisation need to be amended with all types of hazardous and other wastes.”

It is submitted that JCI at page number 25, has observed as follows:

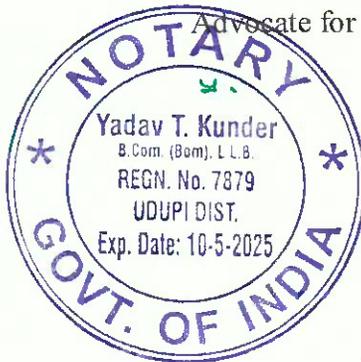
“Industries claim that ETP sludge from fishmeal industries is non-hazardous can be accepted since Schedule I of Hazardous and Other Waste (Management and Handling Transboundary Movement) Rules, 2016 lists chemical sludge from waste water treatment as hazardous. As verified, there is no mixing of used oil with rain water. Industry has provided secured storage or used oil and obtained authorization for handling this waste.”

19. It is therefore submitted by the Respondent No. 11 that the Committee constituted by the NGT in OA 254 of 2020 has made it evident that it has always been in compliance with the Hazardous and Other Waste (Management and Handling Transboundary Movement) Rules, 2016. Thus, it is submitted that the alleged non-compliance has been erroneously stated by the Respondent No. 15 and the question of environmental compensation does not arise.

20. The Respondent No. 11 submits that the question of alleged non-compliance does not arise and the Report in toto is unreliable.

It is humbly prayed by the Respondent No. 11 that the Hon'ble NGT may take these objections on record and dismiss the Report as invalid and pass such necessary Orders as the Hon'ble Tribunal may deem fit and thus render justice.

Place: Udipi, Karnataka



Notary Stamp Not Available
in Karnataka

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SI No 618
Date 6-12-2021
Book No II

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For YASHASWI FISH MEAL AND OIL COMPANY

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11th Respondent

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**BEFORE THE NATIONAL GREEN
TRIBUNAL
(SOUTHERN ZONE)
(ORIGINAL SIDE JURISDICTION)
ORIGINAL APPLICATION No.(SZ) 27
of 2019**

IN THE MATTER OF:-

Shri.Kishore Kumar and another
.....Applicants

Vs.

Union of India and others
..... Respondents

**OBJECTIONS FILED BY
RESPONDENT No.11 TO THE
ENVIRONMENTAL
COMPENSATION 'REPORT FILED
IN OA 27 OF 2019.**

**M/s T.K.BHASKAR (671/95)
SRINATH SRIDEVAN (1109/95)
K.HARISHANKAR (762/96)
ADVOCATES
Counsel for 11th Respondent**

ANNEXURE NO. 1

Sl. No	Purpose	Water Consumption in KLD		Waste Water Generation in KLD
		Fresh Water Consumption	Treated Water Utilization	
1	Domestic	15	0	10
2	Industrial			
	Agriculture	0	42	0.0
	Boiler feed	30	0	2.0
	Cooling Water	0	250	-
	Process Water	0	0	282
	Others- Washings	8	39	47
	Total	53	331	341

**BEFORE THE NATIONAL GREEN
TRIBUNAL
(SOUTHERN ZONE)
(ORIGINAL SIDE JURISDICTION)
ORIGINAL APPLICATION No.(SZ) 27
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**ANNEXURES TO OBJECTIONS
FILED BY RESPONDENT No.11 TO
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**M/s T.K.BHASKAR (671/95)
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ADVOCATES
Counsel for 11th Respondent**