

BEFORE THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE AT CHENNAI
MEMORANDUM OF APPEAL
Under Sec.18(1) read with Section 16 the of National Green
Tribunal Act, 2010)

Appeal Nos. 73 & 74 of 2021

Rajshree Sugars & Chemicals Limited,
Rep by its Depy. General Manager,
Mr.M.Thangathiruppathi,

... Appellant

Versus

1. M/s. GKN Food Products,
A Partnership Firm,
Rep. by its Managing Partner,
Mr. Sivamurugeswara Pandian.N.
Theni District & 2 others

... Respondents

WRITTEN SUBMISSIONS FILED ON BEHALF OF THE APPELLANT

The Appellant above named respectfully submits as follows:-

FACTS:-

1. The Appellant is involved in the business of manufacture of Sugar and certain other products with their sugar industry located at Varatharaj Nagar, Periyakulam Taluk, Theni District.

2. The Taluks of Theni Periyakulam, Andipatty, Bodinayakanur and Uthamapalayam of Theni District and part of Usilampatty and Peraiyur Taluks of Madurai District were declared as reserved area for the sugar factory set up by the Appellant by the Government of Tamil Nadu under Clause (6) of the Sugarcane Control Order 1966 vide Proceedings dated 02.09.1987, 17.05.1988 and 21.06.1991 of the Director of Sugar and Cane Commissioner, Tamil Nadu.

3. As per the provisions of the Sugarcane Control Order, in respect of the reserved area no other person is permitted to manufacture Sugar or buy sugarcane from the Sugarcane growers without a license from the Central Government.

4. In June 2020, the 1st Respondent started setting up a industrial unit by installing machineries at S.F.No.892/3A, Sadayalpatti Village, Kodankipatti Village, Bodinayakanur Taluk, Theni District.

5. The above location falls under the reserved area of the Appellant and First Respondent started setting up the industry without any statutory permission under the Sugarcane Control Order.

6. The Appellant sent representations dated 25.06.2020, 17.12.2020 and 26.03.2021 to the Commissioner of Sugar Chennai, complaining about the setting up of the industry by the First Respondent.

7. In the mean time, the First Respondent had approached the TNPCB for grant of Consent to Establish the unit for purported manufacture of Jaggery.

8. The application was rejected by TNPCB by order dated 29.01.2021.

9. The reasons were that (a) the unit had started its construction activities in agricultural lands without obtaining Consent from the Board (b) the unit has not furnished any approved building plan/ permit for the location which is a non plan area (c) the unit site is located to several houses.

10. The First Respondent challenged the rejection in Appeal Nos. 10 & 11 of 2021 before the Appellate Authority.

11. The Appellant filed impleading application in I.A Nos. 61 & 62 of 2021 in the above appeals and the same were allowed by the Appellate Authority on 16.04.2021 and the Appellant was added as the 3rd Respondent in the Appeal.

12. The Appellant raised the following objections, viz.,

(a) The unit of the First Respondent is in the reserved area of the Appellant

(b) The amendment notification dated 31.07.2007 will not apply to the First Respondent as they are actually proposing to manufacture only Chakkar/Khandasari Sugar which products are not exempt.

(c) The 1st Respondent has installed machineries worth crores of rupees, while manufacturing of jaggery is a cottage industry not requiring any investment beyond Rs. 5 lakhs.

(d) The manufacturing process shows what will be produced is not jaggery but only allied products of sugar.

(e) The 1st Respondent had not obtained permission under G.O.Ms.No.79 Housing and Urban Development Department dated 04.05.2017 for change of user in a non plan area.

f) The First Respondent themselves had made representations to the Commissioner of Sugar for exemption and filed a Writ Petition,

viz., W.P.No.14415/2021 before Madurai Bench of Hon'ble Madras High Court for a Mandamus to consider their representation.

(g) The Hon'ble High Court by order dated 16.08.2021 has directed the Commissioner of Sugar to consider the representation of the First Respondent and take a decision after affording a reasonable opportunity to all concerned parties and the decision is still awaited.

13. The Appellate Authority dated 06.10.2021 has set aside the order of rejection of the consent and has directed the board to grant consent to the First Respondent.

14. Aggrieved by the order of the Appellate Authority the present appeals has been filed. The Appellate Authority had concluded (i) Since exemption has been granted to manufacture of jaggery, the objections of the Appellant are over ruled. (ii) In view of the letter dated 17.08.2021 issued by the Joint Director of Agriculture, no re-classification of land is required (iii) The houses cited in the rejection order are unapproved.

SUBMISSIONS OF THE APPELLANT:-

15. The First Respondent is required to obtain necessary permission from the Town and Country Planning Authority before making the application for consent to the board as the location is in a non plan area.

16. The First Respondent has admitted this position and has actually filed an application for permission as per the provisions of

with G.O.Ms.No.79 dated 04.05.2017 which is still pending before the authorities.

17. This application itself was filed after filing of the appeal against the rejection of the consent.

18. In the letter dated 09.11.2020 the Town and Country Planning Department has specifically stated that any development in a non plan area can be started only after obtaining permission under with G.O.Ms.No.79 dated 04.05.2017.

19. The exemption notification under Sugar Cane Control Order dated 31.07.2007 will not apply to the First Respondent in as much as it has to be factually determined whether the First Respondent is actually manufacturing jaggery or other products which are covered by the Sugar Cane Control Order 1966.

20. This aspect has been directed to be considered by the order of the High Court of Madras dated 16.08.2021 after hearing all parties and the Commissioner of Sugar is yet to hear all the parties including the Appellant and detailed order is still awaited.

21. Until such time the issue is determined as per the directions of the Hon'ble High Court by the Commissioner of Sugar is not open to the First Respondent to contend that they are manufacturing jaggery and the same is exempted from the provisions of Sugar Cane Control Order 1966.

22. The letter dated 01.09.2021 sent by the Commissioner of Sugar only states that the area delimitation committee will consider the issue. The Appellant has thereafter requested the commissioner

of sugar by their representation dated 04.10.2021 to determine the issue as directed by the High Court.

23. The Appellate Authority erred in directing grant of consent when it is clear that the First Respondent has not

(a) obtained statutory clearance for carrying out development in a non plan area and

(b) declaration from the Commissioner of sugar that their unit is exempt from the Sugar Cane Control Order 1966.

24. In the absence of compliance with the above essential requirements, CTE cannot be granted as the Board is performing a statutory function and is not merely issuing a No Objection Certificate while granting CTE.

25. Therefore, consent cannot be granted in anticipation of the First Respondent complying with the mandatory requirements after grant of CTE. In other words, unless the basic requirements are complied with, application for CTE cannot be considered.

26. In fact, the First Respondent ought to have been directed to resubmit their application for consent after complying with all statutory requirements so that the application can be considered in accordance with law.

27. After this Hon'ble Tribunal admitted the above appeals and granted interim orders on 25.10.2021, the Respondent Board has granted consent to the First Respondent which has been now kept in abeyance.

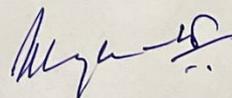
28. The First Respondent has completed the entire construction without even obtaining CTE and going by the description of the manufacturing process as well as the investment made in the business, the industry is not a jaggery industry.

29. The Appellant has been functioning in the same reserved area for the last 24 years and any order for bifurcation within the reserved area is only for administrative convenience and not mandatory. Therefore, it is not open to the First Respondent to contend that separate bifurcation orders have.

30. Sugarcane is a highly regulated commodity and quiet scarce. There is a severe shortage of sugarcane already even for the Appellant to meet its own requirements in the reserved area. The First Respondent is disguising itself as a jaggery unit to escape the rigour of the Sugar Cane Control Order to operate in the very same reserved area in-directly which is not permissible.

For the reasons stated above, it is humbly prayed that this Hon'ble Tribunal may be pleased to allow Appeal Nos. 73 & 74 of 2021 and thus render justice.

Dated at Chennai on this the 20th day of December 2021



COUNSEL FOR APPELLANT