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Noted & Registered

At Serial No. 1631

Date. 16 APR 2023

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BEFORE THE NATIONAL GREEN TRIBUNAL WESTERN

ZONE BENCH, PUNE

O. A. NO.18 OF 2021

Mr. Sanjay Bhimashankar Thobde

...Applicant

Versus

The Chairman and Directors,

Shree Siddheshwar Sahakari Sakhar Karkhana Ltd.,

And Ors

.... Respondents

Affidavit to bring additional fact on behalf of the Applicant.

I, Mr. Sanjay Bhimashankar Thobde, the Respondent No. 1 herein; aged about 59 years, residing at, 701, North Kasba, Solapur; state on solemn affirmation as hereunder:

1. I have filed application no. 18 of 2021 before the NGT on 03/02/2021. Since then the final hearing of the case was heard on 11th April 2023, now additional issues pertaining to case cropped up now, which are necessary to be brought on record for consideration of the above referred matter which are as mentioned below.

2. The Hon'ble High Court in the WP No. 12607 dated 20th October 2022 has ordered that,

"The Petition has been amended. Mr Kulkarni presses prayer clause (e-1).

It reads thus:

"(e-1) that this Hon'ble court be pleased to direct the respondent no. 3

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and 4 to decide the application for seeking consent to operate dated 25.05.2022 for crushing season of 2022-23 for 2500 TCD at Exhibit-X and decide the application for seeking consent to operate dated 06.07.2022 for crushing season of 2022-23 for 2400 TCD at Exhibit-Z without insisting for EC in teeth of clause 5(j) of schedule appended to EC notification dated 14.09.2006 forthwith after hearing the Petitioner.”

I submit that, on a plain reading, we cannot grant such a relief. It would be directly contrary to the statute and the applicable regulations. “The copy of which is annexed herewith as Annexure (I)

Also, the Hon’ble Suprem Court in the Civil Appeal no. 9222 of 2023, has in its interim order has given them a liberty to crush @ 5000 TCD, which reads as,

“In the meanwhile, we are inclined to partly stay the operation of the impugned order, that is, the direction given in paragraph 30 restraining the appellants from crushing of cane till the time environment clearance is granted, subject to the condition that the appellant will not exceed crushing @ 5000 TCD (Tons of Cane per Day). We have passed this order as the appellants have relied upon Serial No. 5(j) of the schedule to the notification S.O. 1533 (E) dated 14.09.2006 of the Ministry of Environment and Forests.

We give liberty to the respondents to apply for modification of this interim order, if required.

Proceedings before the National Green Tribunal, Western Zone Bench, Pune, shall continue uninfluenced by pendency of the present appeal.”

3. I say that, recently it is come to attention that a new problem has cropped up, which is a Kajali (fly ash) of the sugar factory is spreading over an area of 10 kms. For which several people have signed to stop the unauthorized and harmful pollution by the respondent, as it is being life

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threatening for the Children in the vicinity. This is already submitted in this Hon'ble Tribunal.

4. I say that considering the illegal action and harm caused to the environment by the respondent it is prayed that, the factory administration be ordered to stop utilizing the illegally expanded boiler of 200 TPH and 92 meters stack immediately and instead keep on their crushing, with the old machinery, as they have crushed more than 5000 TCD in 2005-2006 season before expansion.

The copy of which is already annexed with my affidavit dated 7th January 2022 as Annexure-V2

5. I further say that, in 254th meeting of SEIAA dated 27th November 2022, on page no. 305, the sugar factory's representative has clearly admitted that, they are having 6 no. of boilers in operational condition. Also, I have instructed year after year to the sugar factory's administration, that the 200 TPH boiler and 92 meters stack being illegal can be ordered to stop its operation any time, so keep the old machinery in working condition, so that it will not hamper the production.

The copy of which is already annexed with my previous affidavit dated 7th January 2022 as Annexure (P,Q,R & S)

6. I further say that, it's necessary to add the number of days of the crushing season of 2021-2022 and 2022-2023, in the calculation of the environmental compensation. As per the

7. I further say that, the MPCB officers have acted in favour of the factory administration and have twisted some figures in the calculation of the environmental compensation in para no. 11 , as under :

"11. Also while arriving at the location factor, the MPCB officers have relied on the 2011 census figures but they could have relied on the

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government figures as on today , which is 1042000. So the load factor ought to be 1.25 instead of 1 as in the report. “

Crushing days before 2021-2022 season as calculated in the report = 1419
Crushing Days of 2021-2022 season including Distillery operating days = 373

Crushing Days of 2022-2023 season including Distilary operating days counted as average days = 336

The total number of days = 1419+373+336 = 2128

So, now the Environmental compensation is as under,

$$EC = PI * N * R * S * LF.$$

$$EC = 80 * .2128 * 250 * 1.5 * 1.25.$$

$$EC = 79800000/- ₹$$

8. I further say that, SEIAA in their 254th meeting, has levied in their deliberations on page no. 322 as

“The state to submit the penalty of ₹ 3.681 crores as per the OM and SOP for violations cases by MOEF & CC vide no. 22-21 /2020 IA- III dated 07-07-2021. (1% of the project cost of ₹ 273.83 (₹2.738 crores) or expansion activity and 0.25 % of the total turnover from year 2016-2017 season to 2022-2023 season. This has to be taken from respondent no. 1. And final calculations have to be made.

The circular's relevant part is produced as under,

“ 12. Penalty provisions for Violation cases and applications:

b.

For expansion projects:

Where operation/production with expanded capacity has not commenced:

1% of the project cost, attributable to the expansion, incurred up to the



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date of filing of application along with EIA/EMP report.

Where operation/ production with expanded capacity have commenced:

1% of the project cost (attributable to the expansion activity) incurred upto the

date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.”

9. I further say that, after detail discussion with state and their Consultant SEAC-1, decided to recommend this proposal to SEIAA subject to the action taken against pp under section 19 of the Environment protection act 1986, deposition of bank guarantee of ₹ 10.34 crores and following specific conditions.

10. In this the 5th condition is as under,

The state implement the Enterprise social commitment by providing 5% of the total project cost as identified by EAC & MOEF & CC in their 6th meeting held on 30th March 2016. State to submit commitment in this regard.

11. The recalcitrant Respondent Company is flouting the directions issued by MPCB as well as various Hon'ble courts. There is utter disregard for the directions of the govt. authorities and the Respondent Company is continuing to violate environmental laws and is causing air and water pollution affecting the health and livelihood of the villagers.

12. The Applicants state that if this act of Respondent Company continues, human life and their environment will face irreparable damage and hence the Respondent Company needs to be restrained in continuing its pollution.

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13. The Ministry of Environment, Forests and Climate Change has till date not provided copy of the Environmental Clearances granted to the Respondent Company.

14. Considering the above referred situation it is just and necessary to grant all the prayers as prayed in the main application by the applicant along with the compensation from the respondent company as stated above.

Whatever stated herein above is true and correct to the best of my knowledge and belief.

Solemnly affirmed at Solapur]
this 16th day of April 2023]

Sherale
(Sanjay Bhimashankar Thobde)



Explained and identified by Before me,
Sherale
Adv. R. D. Sherali
I know the Affiant.
B.Com. LL.M G.D.C. & A
4 A, Yashwant Hsg. Society,
Kumtha Naka, Solapur - 03.
Mobile No 9604783130

~~affirmed~~ affirmed before me on
Mr. Sanjay B. ~~...~~ Thobde
who is identified by ~~Shri.~~ *Adv. R.D.*
whom personally know *Sherale*.
Date 16 APR 2023

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130/13 to 15 A, Sidheshwar Peth,
Near Civil Court, Solapur-413 003



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