

ADDITIONAL REPORT BY JOINT COMMITTEE IN THE HON'BLE NATIONAL GREEN TRIBUNAL (NGT) MATTER IN O.A. NO. 08 OF 2023 (WZ), MR. SUDAM GOVINDRAO JADHAV Vs KALYAN TOLL INFRASTRUCTURE LTD & ORS.

1.0 Background

Hon'ble NGT vide dated 01.02.2023 passed order in the matter of O.A. No. 08 of 2023(WZ), Mr. Sudam Govindrao Jadhav Vs Kalyan Toll Infrastructure Ltd & Ors. The matter relates to Kalyan Toll Infrastructure Ltd. is running Hot Mix Plant and RMC plant at Gat No. 141 in the same location, emitting a huge quantity of ash, dust and hazardous small pollutants causing damage to the crops of the Applicant.

Hon'ble NGT vide Order dated 01.02.2023 (copy of Hon'ble NGT Order, dated 01/02/2023 is given at Annexure-I) directed to constituted committee comprising one Member each from:-

1. The District Magistrate.
2. The Maharashtra Pollution Control Board (MPCB); and
3. District Agriculture Officer.

In compliance with the direction dated 01.02.2023, the site visit was conducted by joint committee **on 22nd February 2023**. The committee is comprised of Mrs. Pratiksha Bhute, Tahsildar-Manwat, Mr. Shripad Kulkarni, Sub Regional Officer MPCB, Mr. Govind Kolhe, Technical Officer, Sub Divisional Agriculture Office, Parbhani. Committee visited project site of Industry M/s Kalyan Toll Infrastructure Ltd., Gat No. 141, Adgaon Darade, Tal. Selu, Dist. Parbhani and Agriculture land of Petitioner Mr. Sudam Govindrao Jadhav located at Gat No. 142. The Joint Committee submitted it's report before Hon'ble NGT, on 02.03.2023.

Hon'ble NGT passed an order dtd. 21.03.2023 and directed the Joint Committee to submit an additional report regarding certain concerns raised in above mentioned order within a period of three weeks.

2.0 Clarification on points raised by Hon'ble NGT:

Point No. 1: The Project Proponent has not installed necessary pollution control system and started production from March 2022 without Consent to Operate for which legal action is being taken by issuing the Project Proponent a show-cause notice but what happened thereafter has not been indicated in this report.

Explanation: With respect to complaint by Mr. Sudam Govind Jadhav and noncompliance observed during MPC Board Official visit to Hot Mix plant of M/s Kalyan Toll Infrastructure Ltd., Gat No. 141, Adgaon Darade, Tal. Selu, Dist. Parbhani, Regional Officer, MPCB, Aurangabad issued proposed direction to industry vide letter dtd. 21.10.2022. Afterwards, personal hearing extended to Project Proponent and Interim Direction was issued on 17.11.2022. In compliance of interim direction dtd. 17.11.2022, M/s Kalyan Toll Infrastructure Ltd. applied for consent to operate vide application No. MPCB-CONSENT-0000154601 dtd. 26.12.2022 for Hot mix & RMC Plant at Gut No. 141 & 143, Adgaon Darade, Tal. Selu, Dist. Parbhani. On the basis of noncompliance observed on 17.11.2023 during visit of MPC Board Official, with respect to application of Industry, show Cause Notice for refusal of consent was issued by Regional Officer, MPC Board, Aurangabad vide letter no. MPCB/ROA/SCN/2301180006/2023, dtd. 18.01.2023 and directed to submit/ upload reply on non-compliances observed. Industry has uploaded reply to the show cause notice dtd. 18.01.2023 on MPCB Portal mentioning Industry has made compliance against the show cause notice. Then after, consent to operate issued by Regional Officer, MPC Board, Aurangabad to M/s Kalyan Toll Infrastructure Ltd. vide No. RO/UAN No.0000154601/CO/2301001590 dtd. 18.01.2023 for Hot mix & RMC Plant at Gut No. 141 & 143, Adgaon Darade, Tal. Selu, Dist. Parbhani

Point No. 2: it is apparent that since March, 2022 till 18.01.2023, the Project Proponent has operated Hot Mix plant and Ready Mix plant without Consent to Operate, which is violation and that the MPCB was required to quantify the environmental compensation for that period as per the guidelines laid down by the Central Pollution Control Board, which has not been done.

Explanation:

Calculation of Environmental Compensation for violation of Consent condition by the Industry- M/s Kalyan Toll Infrastructure Ltd., Gat No. 141, Adgaon Darade, Tal. Selu, Dist. Parbhani:

Central Pollution Control Board prepared a report namely- "Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund", in which methodology has been developed for assessing environmental compensation to be levied on concerned industry, authority, individual etc. for the protection of environment. Accordingly, formula for levying the Environmental Compensation is-

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC = Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

In case of M/s Kalyan Toll Infrastructure Ltd., Gat No. 141, Adgaon Darade, Tal. Selu, Dist. Parbhani, it is to be noted that as per MPC Board Official Visit dtd. 07.10.2022, Production activity of Hot Mix Plant was started from March-2022 without obtaining valid consent to operate from the Board. Consent to operate issued by Regional Officer, MPC Board, Aurangabad to M/s Kalyan Toll Infrastructure Ltd. vide No. RO/UAN No.0000154601/CO/2301001590 dtd. 18.01.2023 for Hot mix & RMC Plant at Gut No. 141 & 143, Adgaon Darade, Tal. Selu, Dist. Parbhani. Therefore, it is apparent that, Industry operated without obtaining consent to operate from the Board from 01.03.2023 to 18.01.2023, which is violation of condition given in consent to establish i.e “ The applicant shall not start any commercial production before obtaining the valid consent to operate from the Board”. Therefore, total days violation took place is 324 days.

For violation committed by M/s Kalyan Toll Infrastructure Ltd., values of various components of above mentioned formula will be as follows-

PI= 50 (Orange Category as per CPCB Categorization)

N= 324 Days (From 01.03.2022 to 18.01.2023)

R= 250

S= 0.5 (Small Scale Industry)

LF=1 (Unit is located >10 km from municipal boundary of nearest town Selu, Dist.

Parbhani having population less than one million, i.e 46,915 as per Census 2011)

Therefore,

Environmental Compensation in ₹ = 50 x 324 x 250 x 0.5 x 1

= 20,25,000

(Rupees Twenty Lacs and twenty-five thousand)

Point No. 3: In the concluding part of the Joint Committee report, the crops which have been shown to have been grown on the survey number in question are banana, soyabean, mug and harbhara and the period recorded about these crops is 2017 to 2020 and 2020 to 2022. For the period of 2020-2022, one crop i.e. cotton crop has been added as per the said report. But we fail to understand as to why the said period has been mentioned by the Joint Committee because the

quantification of the crop damage was to be done by them, which was possible only for the period when the said Unit was operating without any Consent to Operate, and we have already recorded that it was nine months approximately for which Consent to Operate was not given.

Explanation: Mr. Sudam Govind Jadhav, Applicant vide letter dtd. 04.10.2022 claimed compensation for crop damaged for the period 2020-21, 2021-22 and 2022-23. Therefore, said period has been mentioned by the Joint Committee. The period between March-2022 to 18.01.2023, when said unit was operating without obtaining consent to operate from MPC Board, has been taken in to account for actual quantification of the crop damage.

Point No. 4: We find that the Joint Committee should obtain information as to what was the crop yield prior to the functioning of the said plant and subsequent to its operation, whether there was drop in crop yield.

Explanation: For estimation of the crop yield prior to the functioning of the said plant and subsequent to its operation and to verify that whether there was drop in crop yield, Mr. Sudam Govindarao Jadhav was requested to submit all available documentary evidence of crop production/sale from his agricultural land at Gut No. 142 for the period 2020-21, 2021-22 and 2022-23, for consideration of the Joint Committee,

Point No. 5: It is also to be noted that the crops which are stated to have grown in the survey number in question are totally different from the ones which are stated by the applicant to have been grown by the applicant.

Explanation: Joint committee considered the crop record from *Gav Namuna* 12 i.e. Crop Register which was earlier maintained by Talathi/Circle Officer. From 2021-22, it is the responsibility of the individual farmer to maintain the same by a mobile application. Some crops which are mentioned by applicants are not recorded on the crop register. Therefore, crops which are stated to have grown in the survey number in question are totally different from the ones which are stated by the applicant to have been grown by the applicant.

Point No. 6: We have already noted that this much minimum was expected of the Joint Committee that what was the crop grown by the Project Proponent and its yield prior to setting up of the plant and whether there was drop in the crop yield after establishing of the plant, should be stated by the Joint Committee.

Explanation: For estimation of the crop yield prior to the functioning of the said plant and subsequent to its operation and to verify that whether there was drop in crop yield, information of crop production prior to commissioning of the Hot Mix Plant and after commissioning of plant was necessary. Therefore, Mr. Sudam Govindarao Jadhav, the applicant was requested to submit all available documentary evidence of crop production/sale from his agricultural land at Gut No. 142 for the period 2020-21, 2021-22 and 2022-23, for consideration of the Joint Committee. While estimation of crop damage, following records and facts were considered,

1. Documents submitted by the Applicant Mr. Sudam Govindrao Jadhav with respect to Crop Production from his agricultural field.
2. Actual Crop records on field and on 7/12 are found different. Therefore, for loss estimation actual crops found during field visit were considered.
3. For loss calculation, actual yield data provided by the farmer (e.g. receipts) has been compared with available crop cutting experiment data – 2022 of respective revenue circle or nearest revenue circle.
4. Crops which are at vegetative stage or before harvesting stage, the amount of yield estimated as per visual observations.
5. Due to unavailability of crop records of financial year 2021-22, it is not possible to estimate the loss of crop taken in Rabi season in the same year.

Estimation of drop in Crop Yield:

Table 1: Kharip Season- 2022-23 (June - October):

(Crop Records as per Taluka Agriculture Officer field visit dtd. 21-10-2022)

Crop details as per Revenue Record (Crop & Area)	Crop details as per field observation	Crop Stage during Field Visit	Sowing Date	Crop Yield (as per field condition)	Crop yield as per crop cutting experiment (CCE)	Total yield as per Crop Cutting Experiment (2 x 6)	Estimated Yield loss (7-5)	Estimated Yield loss in Rs.
1	2	3	4	5	6	7	8	
Cotton – 2.0 Ha	Sugarcane – 1.2 Ha	Vegetative stage	Jan-Feb 2022	33.07 MT (Actual)	110.80 MT/Ha	121.88 MT	88.81 MT	2,70,870/-
Soyabean - 4.0 Ha	Soyabean – 4.8 Ha	Harvesting stage	June - 2022	56.5 Qt.	18.35 Qt /Ha	88.08 Qt	31.58 Qt	1,35,794/-

Table 2: Rabi Season 2022-23 (October to April)
(Crop records as per Joint Committee Field Visit dtd. 22-02-2023)

Crop details as per Revenue Record (Crop & Area)	Crop details as per field observation	Crop Stage during Field Visit	Sowing Date	Crop Yield (as per field condition)	Crop yield as per crop cutting experiment (CCE)	Total yield as per Crop Cutting Experiment (2 x 6)	Estimated Yield loss (7-5)	Estimated Yield loss In Rs.
1	2	3	4	5	6	7	8	9
Gram – 3.0 Ha	Sugarcane - 1.1 Ha.	Post Harvest	Jan/Feb 2022	33.07 MT (Actual)	110.80 MT/Ha	121.88 MT	88.81 MT	2,70,870/- (Already mentioned in Table1)
	Wheat - 0.4 Ha	Harvesting stage	Oct-Nov - 2022	7-8 Quintal (Estimated)	22.46 Qt. /Ha	8.98 Qt.	1-2 Qt.	3022/-
	Soyabean - 0.8 Ha	Vegetative stage	Jan-2023	9-10 Quintal (Estimated)	18.35 at / Ha	14.68 Qt.	5-6 Qt.	23,650/-
	Onion (seed production) - 1.6 Ha	Flowering stage	Oct-Nov-2022	Due to non-availability of crop cutting experiment data for onion seed, it is not possible to predict yield loss. Considering variation in field condition 1200-1300 kg/ha onion seed production generally observed. Since, onion flowering is very sensitive to pollutants, up to 70% yield loss is predicted.				

Therefore, considering above facts, it can be concluded that, drop in the crop yield for the Sugar cane is 88.81 MT, for Wheat 1 to 2 Quintal and for Soyabean it is 37 Quintal. To estimate the loss in monetary terms, Fair & Remunerative Price (FRP) for sugarcane declared by Govt. of India for the season 2022-23, which is Rs. 3050/- Per Metric Ton, has been considered. For loss of Soyabean, Minimum Support price (MSP) of Rs. 4300/- per quintal and for wheat Rs. 2015/- per quintal, as declared by Govt. of India for season 2022-23 has been considered. Therefore, total estimated loss occurred in Rs. is 4,33,246/-. Due to non-availability of crop cutting experiment data for onion seed, it is not possible to predict yield loss. However, considering variation in field condition, 1200-1300 kg/ha onion seed production generally observed. Since, onion flowering is very sensitive to pollutants, up to 70% yield loss is possible.


Pratiksha Bhute
Tahsildar Pathri,
Dist. Parbhani


Shripad Kulkarni
Sub Regional Officer, MPCB,
Parbhani


Govind Kolhe
Technical Officer, Sub
Divisional Agriculture Office,
Parbhani