

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

APPEAL No. 66&67 OF 2024 (SZ)

M/s. GKN Food Products Pvt Ltd.,
Rep by its Managing Director
N. Sivamurugeswara Pandian
Theni District-625 534

... Appellant

Versus

Tamil Nadu Pollution Control Board
Rep by its Chairman
and two others

... Respondents

REPLY FILED ON BEHALF OF THE 3RD RESPONDENT

The 3rd respondent above named respectfully submits as follows:

- 1) The present appeal is filed by the appellant is in gross violation of the earlier specific direction mandated by the Hon'ble National Green Tribunal in its order dated 28.08.2022 in Appeal No.73 & 74/2021. This respondent however proceed to submit their reply to the issue raised in the appeal in the following manner.
- 2) In June 2020, the appellant started setting up an industrial unit by installing machineries at S.F.No.892/3A, Sadayalpatti Village, Kodankipatti Village, Bodinayakanur Taluk, Theni District. The above location falls under the reserved area of the third respondent and appellant started setting up the industry without any statutory permission under the Sugarcane Control Order.

For RAJSHREE SUGARS & CHEMICALS LTD,

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M. THANGA THIRUPATHI
Dy. General Manager - IR

- 3) The third respondent 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 appellant as 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 third respondent 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. 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 the mean time, the appellant had approached the TNPCB for grant of Consent to Establish the unit for purported manufacture of Jaggery.
- 5) The third respondent states that when the appellant approached TNPCB for grant of consent to establish their unit for purported manufacturer of Jaggery, the application was rejected by Tamil Nadu Pollution Control Board by order dated 29.01.2021 on the following grounds.
- a) The unit had started its construction activities in agricultural lands without obtaining Consent from the Board

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- 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.
- 6) The appellant challenged the rejection of Consent to Establish in Appeal No. 10 and 11 of 2021 before the Hon'ble Appellate Authority. The third respondent was also impleaded in the above appeals and raised the following objections.
- a) The unit of the appellant is in the reserved area of the third respondent.
- b) The amendment notification dated 31.07.2007 will not apply to the appellant as they are actually proposing to manufacture only Chakkar/Khandasari Sugar which products are not exempted.
- c) The appellant 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 appellant 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.

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- f) The appellant 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 appellant and take a decision after affording a reasonable opportunity to all concerned parties and the decision is still awaited.
- 7) The appellate authority by order dated 6.10.21 allowed the appeal filed by the appellant by setting aside the order of rejection and directed the board to grant consent to the appellant.
- 8) Aggrieved by the aforesaid order, the third respondent filed Appeal No.73 && 74 of 2021 before this Hon'ble Tribunal. The appellant, during the course of the argument contended that the appellant himself has filed an application for permission under G.O.Ms.No.79 dated 4.05.2017 seeking for permission to convert the agricultural land for industrial use and that no development in the non plan area can be started without obtaining such permission. The other contention raised was that pursuant to the order passed by the Hon'ble High Court of Madras dated 16.8.2021 in W.P.No.14455/21, the commissioner of Sugar has been directed to hear all the parties including the appellant in order to determine

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whether the appellant is actually manufacturing jaggery or other products that are covered by the sugarcane control order 1966.

9) During the pendency of the appeal, the appellant had been granted consent even though interim orders were in force from 25.10.21 however the board kept the same in abeyance.

10) The Hon'ble National Green Tribunal, (SZ) Chennai after hearing all the parties passed final orders on 28.01.2022 allowing the appeals by setting aside the orders of the Appellate Authority observing as follows:

- a) The PCB has power to direct the project proponent to produce necessary permission for conversion of non planning area as per G.O.MS.No.79 dated 04.05.2017
- b) The board may consider any fresh application by the appellant after obtaining such permission for conversion and planning permit and while considering the board shall consider it as a violation case (since unit had been established without consent) and impose environmental compensation as per CPCB guidelines.
- c) The consent already granted on 27.10.21 to the appellant is set aside.
- d) The issue regarding applicability of the sugarcane control order 1966 based on the orders passed in writ petition are the matter outside the purview of the tribunal and the same will have to be considered by the concerned authorities.

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- 11) The third respondent states that the appellant has subsequently filed a fresh application for Establishment of the unit on 21.12.22 for the very same location to the board. The first respondent board by order dated 13.01.2023 has granted the same. Subsequently the board has granted Consent to Operate the unit by its order dated 20.05.2023.
- 12) Aggrieved by the aforesaid order the third respondent filed appeal viz., Appeal No. 65 & 66/2023 before the Hon'ble Appellate Authority on the ground that the order dated 13.01.2023 initially granting Consent to Establish to the appellant is identical to the earlier ordered dated 27.10.21 for Consent to Establish which was set aside by the Hon'ble Tribunal by its order dated 28.1.22. It was incumbent on the part of the board to follow the directions issued by the Hon'ble National Green Tribunal before proceedings to grant the aforesaid consent to the unit.
- 13) The Hon'ble Appellate Authority after hearing all the parties passed final orders on 13.08.2024 allowing the appeals by setting aside the order granting consent to operate the unit in favour of the appellant herein by observing as follows:

"The reason for granting exception for converting land from agricultural use to non agricultural use should have been recorded by the authorities for issuing a conversion certificate.

We have not come across any such records, much less of

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specific order for conversion produced before the first and second respondents or before this authority for consideration. In that event, we consider the specific direction mandated by the Hon'ble National Green Tribunal in its order in Appeal No.73 & 74/2021 dated 28.08.2022 has not been complied with and no order of conversion has been obtained by the third respondent for getting consent to operate. In such circumstances the order passed by the respondent board is violative of the directions issued by the Hon'ble National Green Tribunal and does not stand the test of scrutiny of law".

In such circumstances, we have no hesitation to set aside the consent to operate granted in favour of the third respondent. The appeals stands allowed.

- 14) The appellant has failed to obtain the necessary statutory clearance before making an application for consent before the board. It is submitted that the nature of land use classification and necessary permission from the Town and Country Planning Authority is a mandatory requirement for the purpose of issue of consent. In the instant case it is admitted position that S.F.No.892/3A, Sadayalpatti Village, Kodankipatti Village, Bodinayakanur Taluk, Theni District, falls under the non-plan area and therefore the permission of the Commissioner of Agriculture as per the guidelines issues in G.O.Ms.No.79 Housing and Urban Development Department dated 04.05.2017 is mandatory in order to apply for consent.

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- 15) The appellant had failed to obtain such permission before submitting an application for consent. However, after filing of the appeal before the appellate authority the appellant appears to have filed an application for permission as per G.O.Ms.No.79 Housing and Urban Development Department dated 04.05.2017 which is still pending.
- 16) In spite of repeated adjournments in appeal, the appellant was never in a position to produce a clear order of approval in accordance with G.O.Ms.No.79 Housing and Urban Development Department dated 04.05.2017. On the other hand the appellant was trying to produce certain communications to make it appear as though approval had been granted. Until this date there is no approval available with the appellant under G.O.Ms.No.79 Housing and Urban Development Department dated 04.05.2017. It is precisely for this reason this Hon'ble Tribunal in its earlier order dated 28.01.2022 set aside the consent order already granted in favour of the appellant 27.10.2021. Any arguments raised contrary to the order of the Hon'ble Tribunal dated 28.01.2022 is to be rejected straight away. The appellant was fully aware that he had to comply with the order of the Hon'ble Tribunal dated 28.01.2022. However, neither the Tamil Nadu Pollution Control Board nor the appellant complied with the order of the Hon'ble Tribunal as a result of which a consent order was issued to the appellant on 13.01.2023 which was rightly set aside by the Appellate Authority.

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- 17) The appellant cannot be permitted to raise any additional ground which was not raised before the Appellate Authority or implead any additional parties at the stage of the appeal.
- 18) In view of what is stated above, the grounds raised by the appellant in Para 17.i to 17.viii are unsustainable and liable to be rejected. It is to be stated that the personal opinion of the appellant that the report of the Joint Director of Agriculture is enough for conversion and no order under G.O.Ms.No.79 Housing and Urban Development Department dated 04.05.2017 is required separately is against law and deserves to be rejected.

Considering all the above aspects this Hon'ble Tribunal may be pleased to dismiss Appeal No.66&67/2024 and thus render justice.

Dated at Chennai on this the 22nd day of January, 2025

For RAJSHREE SUGARS & CHEMICALS LTD.

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M. THANGA THIRUPATHI
3rd Respondent

VERIFICATION

I, M.Thangathirupathi, S/o T.Mookiah, Depy.General Manager- Corporate IR of M/s Rajshree Sugars and Chemicals Limited, the 3rd Respondent herein do hereby verify that what are all stated above are true and correct to the best of my knowledge, information and belief.

Verified at Chennai on this the 22nd day of January, 2025

For RAJSHREE SUGARS & CHEMICALS LTD.

← 
3rd Respondent
M. THANGA THIRUPATHI
Dy. General Manager - IR

T. Hemalatha
COUNSEL FOR RESPONDENT-3.

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T.HEMALATHA, R.RAJMOHAN & S.DEEPIKA

COUNSEL FOR THIRD RESPONDENT