

Item No. 02

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Appeal No. 41/2020

Mohd. Tahir

Appellant

Versus

Delhi Pollution Control Committee

Respondent

Date of hearing: 15.10.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

ORDER

1. This Appeal has been preferred against order dated 27.08.2020 passed by the Delhi Pollution Control Committee (DPCC) imposing compensation of Rupees two lakhs on the appellant on the ground that activities of the appellant are impermissible industrial activity in the residential/non-conforming area. The appellant did not have the consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

2. According to the appellant, the unit of the appellant stands sealed in November 2019. The appellant has also submitted that having regard to the nature and size of the appellant's activity, the compensation quantum is higher. The impugned order does not deal with the reply filed and merely says that either the appellant did not file reply or filed unsatisfactory reply which does not show application of mind.

3. We find substance in the contention that in the impugned order, there is no consideration of the stand of the appellant. In these circumstances, without expressing any opinion on merits, we direct the DPCC to pass a speaking order after considering the stand of the appellant in accordance with law within two months and till a fresh order is passed, the impugned order may not be given effect to.

4. The appeal is disposed of. Since the order is being passed *ex-parte*, the DPCC is at liberty to move this Tribunal for any modification, if DPCC is so aggrieved.

A copy of this order be forwarded to the DPCC by email for compliance.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

October 15, 2020
Appeal No. 41/2020
AK

Item No.01:**BEFORE THE NATIONAL GREEN TRIBUNAL****SOUTHERN ZONE, CHENNAI****Appeal No. 27 of 2020 (SZ) &****I.A. No. 104 of 2020 (SZ)**

(Through Video Conference)

IN THE MATTER OF:

Piramal Enterprises Limited
(Formerly Piramal Healthcare Limited)
(through M/s. Pritee Misra – Senior Legal Counsel)
Unit Address: Village – Digwal,
Kohir Mandal, Sangareddy District,
Telangana 502 321.

Regd Office; Piramal Ananta
Agastya Corporate Park, Opp. Fire Brigade,
Kamani Junction, LBS Marg. Kurla (West)
Mumbai, Maharashtra 400 070.

...Appellant(s)

Versus

1. Telangana Pollution Control Board
Through its Member Secretary,
Paryavarana Bhavan,
A-III, industrial Estate, Sanathnagar,
Hyderabad, Telangana 500 018.
2. Central pollution Control Board
Through its Member Secretary,
Parivesh Bhawan,
East Arjun Nagar, Near Karkardooma Court,
Shahadra, Delhi 110 032.

...Respondent(s)

Date of hearing: 13.10.2020.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Appellant(s):

M/s. Sri. Wasim A. Qadri,
Senior Advocate along with

M/s. Anudhav Anand Aron &
Abhinav Anand

For Respondent(s):

Sri. Sai Krishnan

ORDER

I.A. No. 104 of 2020

This is an application filed by the applicant/appellant to exempt the applicant from producing the certified copy as due to the pandemic situation, and they are not able to get the same and the appeal was filed, on the basis of the served copy of the impugned order under challenge. So the application is allowed and the appellant is exempted from producing the certified copy of the impugned order.

So, the application is closed.

Appeal No. 27 of 2020

1. The above appeal has been preferred by the appellant against the impugned order passed by the first respondent, vide their Proceedings Order No. *MDK-07/TSPCB/TF/HO/2016 828 dated 19.09.2020*, imposing Environmental Compensation of a tune of Rs. 8,31,60,000/- (Rupees Eight Crore Thirty One Lakh and Sixty Thousand Only).

2. When the matter came up for hearing today through Video Conference, Sri. Wasim A. Qadri, Senior Advocate, along with Sri. Anubhav Anand Aron appeared for the appellant and Sri. Sai Krishnan appeared for the sole respondent. So, service is complete.
3. The learned Senior Counsel appearing for the appellant argued, that though earlier order imposing compensation was challenged by the same appellant before this Tribunal by filing an Appeal No. 09 of 2020 and this Tribunal by order dated 21.07.2020 disposed of that appeal and setting aside the order passed by the respondent directing them to treat that order as a show cause notice and after giving an adequate opportunity for the appellant unit to file their objection and giving an opportunity for personal hearing and to pass appropriate fresh order after considering the objections filed by the appellant, but a perusal of the order will go to show that the same has not been followed and they have only stated that the same cannot be allowed without giving any reason as to why they are not accepting the contentions raised by the appellant.
4. Sri. Sai Krishnan, the learned counsel appearing for the respondent submitted that it is on the basis of the joint committee report and the directions given by the Tribunal

that the orders have been passed and natural justice has been complied with by giving them an opportunity to file their objection and that was considered by them. However, if the Tribunal feels that any further reasoned order will have to be passed the same is left to the Tribunal to consider and pass appropriate order in this regard.

5. Since we felt that the appeal can be disposed of at the admission stage itself after hearing both sides, as we have prima facie felt that the directions given by this Tribunal in Appeal No. 09 of 2020 by order dated, 21.07.2020 has not been properly understood and complied with by the authority.

6. It is an admitted fact that some application has been filed before the Principal Bench of National Green Tribunal regarding certain violations and polluting activities committed by certain Industries including the Industry which filed this appeal and the Principal Bench had appointed a joint committee and the joint committee had inspected the units and given their report including assessment of Environmental Compensation as directed by the Principal Bench and the Principal Bench had directed the regulating authorities namely, the Pollution Control Board to take appropriate further action on the basis of the

recommendations made by the joint committee and to take steps to realise the Environmental Compensation in accordance with law.

7. It is also an admitted fact, that on an earlier occasion, on the basis of the directions of the Principal Bench, the Pollution Control Board passed an order imposing an Environmental Compensation of Rs. 8, 31,60,000/- (Rupees Eight Crore Thirty One Lakh and Sixty Thousand Only), against the appellant unit by order dated 29.01.2020 and the appellant had filed Appeal No 09 of 2020 before this Tribunal challenging that portion of the order of the Pollution Control Board and this Tribunal by order dated 21.07.2020 set-aside the order passed by the authority and remanded the matter for fresh disposal with following observations.

20. *“It is seen from the impugned order that there was no prior show cause notice issued by the Pollution Control Board to the erring unit as to why the amount of compensation fixed by the joint committee should not be imposed against them, so that they would have got an opportunity to explain their objection regarding the quantum of compensation to be payable.*

21. *On the other hand, the Pollution Control Board had reiterated all the sequences of events that happened pursuance of the orders of the Principal Bench of National Green Tribunal in Original Application No. 688 of 2018 in **K.***

Lakshma Reddy Vs. M/s. Siddhi Vinayaka Oil Mill & Ors., and the directions issued by the Principal Bench to take action on the basis of the report and issued this impugned order.

22. Since, the appellant is not challenging the revocation order on the other grounds, we are not going into those aspects in this appeal and if there is any violation of conditions imposed found, then they are entitled to pass orders Under Section 33 (A) of Water (Prevention and Control of Pollution) 1981 and 31 (A) of Air (Prevention and Control of Pollution) 1974.

23. Since, compensation being a monetary liability, before fixing the same, an opportunity ought to have been given by the Pollution Control Board to the appellant unit which is the basic principle of following the principles of natural justice of being heard before final orders are being passed. But, that has not been done in this case. When similar issues have come before this Tribunal in Appeal No. 01 of 2020 (**M/s. Indo shell Cast Private Limited Vs. Tamil Nadu Pollution Control Board & Ors.**) this Tribunal had set aside the order of compensation imposed straight away without giving an opportunity to the appellant in that case and directed to treat that order as regards imposition of compensation as show cause notice and after giving an opportunity to the appellant in that case to pass appropriate orders in accordance with law.

24. Even the order of the Principal Bench in Original Application No. 688 of 2018 relied on by the 1st respondent also gives an indication that the final orders will have to be

passed on the basis of the observations and findings of the joint committee appointed by the Tribunal only after complying with the procedure laid down in accordance with law and the units were directed to challenge that order before the appropriate forum and their objections regarding the committee's report has not been considered by the Principal Bench as well. That also indicates that before passing the final order, opportunity has to be given to the erring unit regarding the reasons for future order to be passed including imposition of environmental compensation.

25. Since, the principle of natural justice has been violated in this case before passing the final order to the extent of imposing environmental compensation merely relying on the direction issued by the Tribunal, it is as against law and the same is liable to be set-aside. So, we set aside the impugned order dated 29.01.2020 by Order No. MDK-07/TSPCB/TF/HO/2016- dated 29.01.2020 issued by the 1st respondent only to be extent of imposing environmental compensation alone as that alone was challenged before this Tribunal.

26. We also direct the 1st respondent Pollution Control Board to consider this order in respect of imposing environmental compensation as show cause notice and give an opportunity to the appellant to submit their explanation to the same to that extent alone regarding the quantum of environmental compensation to be fixed and also give them an opportunity of the personal hearing and then, the Pollution Control Board is directed to dispose of this matter

in accordance with law.

27. *So, the appeal is disposed of as follows:-*

(a) The impugned order Annexure A-1 namely Order No MDK-07/TSPCB/TF/HO/2016- dated 29.01.2020 passed by the 1st respondent, to the extent of fixing environmental compensation of Rs. 8,31,60,000/- (Rupees Eight Crore Thirty One Lakh and Sixty thousand only) payable by the appellant unit alone is set aside.

(b) The 1st respondent Pollution Control Board is directed to consider the impugned order to the extent of imposing environmental compensation alone, as a show cause notice issued to the appellant as to why so much amount should not be imposed as environmental compensation.

(c) The appellant is directed to submit their objection to that extent alone before the 1st respondent within a period of 15 days from today.

(d) If the Pollution Control Board wants to issue any fresh show cause notice showing the details of calculation as to how the environmental compensation has been arrived at, they are at liberty to issue the same as well in addition to the present direction issued in the impugned order to the above extent and they can do the same within a period of one week from today.

(e) If such a notice is also issued, then the appellant is directed to submit their objections to the same with in a period of further one week, so, that the Pollution

Control Board can consider their objection and pass appropriate orders in accordance with law.

(f) The Pollution control Board is also directed to give an opportunity of personal hearing if asked for and then pass final orders in the matter in accordance with law at the earliest at any rate within 45 days from the date of receipt of this order.

8. It is on that basis that a show cause notice was issued and objections were filed by the appellant and thereafter the present impugned order has been passed. The perusal of the order will go to show that there is no application of mind on the part of the regulating authority while passing the order. Further, how this aspect has been considered is mentioned in para 14, 15 of the impugned order which reads as follows:

14) **“WHEREAS,** *the Hon’ble NGT vide reference 13th cited, disposed of the appeal with a direction to TSPCB to consider the impugned order dated 29.01.2020 to the extent of imposing Environmental Compensation, alone as a show cause notice issued to the Appellant as to why so much amount should not be imposed as Environmental Compensation and you have been directed to submit the objection within a period of 15 days and Liberty was also granted to the Pollution Control Board to issue fresh show cause notice showing details of calculation of environmental compensation within a week from the date of the order and you have been directed to submit the objections to the further*

Show Cause notice also within the 15 days.

15) **WHEREAS**, *vide reference 14th cited, you were given an opportunity for hearing before the Task Force Committee of the Board on 20.08.2020. The Industry representative has attended the virtual meeting.*

The committee noted, that the industry has filed an appeal, vide Appeal No. 09 of 2020, before the Hon'ble NGT (SZ), Chennai, to set-aside the order of the Board, dated, 29.01.2020 directing the industry to deposit the Environmental Compensation, amounting to Rs. 8,31,60,000/- (Rupees Eight Crore Thirty One Lakh Sixty Thousand Only) as assessed and recommended by the Joint Committee, apart from other directions, in compliance of the Hon'ble NGY order dated, 13.11.2019. The Hon'ble NGT (SZ), Chennai, vide its order dated, 05.03.2020, has stayed the direction of the Board to deposit the Environmental Compensation, for three weeks.

The committee noted that, the Hon'ble NGT vide order dated, 21.07.2020 in O.A. No. 09 of 2020 disposed of the appeal with a direction to TSPCB to consider the impugned order to the extent of imposing Environmental Compensation alone, as a show cause notice issued to the Appellant as to why so much amount should not be imposed as Environmental Compensation. The appellant is directed to submit their objection to that extent alone before the 1st respondent (TNPCB) within period of 15 days from today.

The committee noted the representation given by the industry. The Board vide order dated, 29.01.2020,

directed the industry to deposit the Environmental Compensation, amounting to Rs. 8,31,60,000/- (Rupees Eight Core Thirty One Lakh Sixty Thousand Only) as assessed and recommended by the Joint Committee, apart from other direction, in compliance of the Hon'ble NGT order dated, 13.11.2019.

The committee noted that, the Joint Committee constituted under the directions of the Hon'ble NGT Principal Bench assessed the Environmental Compensation (EC) based on the non-compliance and guidelines of CPCB issued for calculation of Environmental Compensation (EC). Hence, the committee recommended the Environmental Compensation (EC) as carried out by the Joint Committee in accordance with the directions of the Hon'ble NGT.

The committee recommended that, as per the Hon'ble NGT, Chennai order dated 21.07.2020 the industry was given an opportunity to explain and further the reasons submitted by the unit were reviewed by the committee. The committee recommended that the request of the industry for exemption of EC cannot be considered and directed to pay the EC amount of Rs. 8,31,60,000 (Rupees Eight Crore Thirty One Lakh Sixty Thousand Only) as assessed and recommended by the Joint Committee within 15 days and further recommended to issue extension of temporary permission to continue production activity to your industry for a further period of six months with certain directions to comply with."

9. It is seen from this that they have simply mentioned

that opportunity has been given and since the Joint Committee has recommended the amount to be realised, they have no option except to accept the amount and pass the impugned order. It may be mentioned here, that even in the earlier order referred to above, we have categorically mentioned that neither the Principal Bench nor this Bench had expressed any opinion regarding the findings and recommendations made by the committee or the amount of Environmental Compensation fixed and further directed the Pollution Control Board to consider the objections raised by them regarding the quantum of compensation assessed and thereafter, pass appropriate orders giving their reason for not accepting the same and also by giving the details of mode of calculation of the amount as well. However, unfortunately those things were absent in the impugned order. It is reiterated by the Hon'ble Apex Court as well as various High Courts in several decisions, held that whenever Quasi Judicial Authorities are vested with the power of judicial functions of passing orders, then, they are expected to give the reasons for their conclusions by passing a speaking order in this regard.

10. If the Quasi Judicial Authority does not pass a speaking order giving reasons for their conclusions then, that itself is a reason for setting aside the order as it cannot be treated as a

valid order in the eye of the law.

11. Since there is no speaking order passed by the respondent by giving their reasons as to why they are not considering the objections raised by the appellant unit for exempting them for payment of Environmental Compensation recommended by the Joint Committee and they have also not given the manner in which the compensation was arrived at in the impugned order as well, under such circumstances, we have no other option but to set-aside the order and direct the Pollution Control Board to pass appropriate speaking, reasoned order as has been reiterated by the Hon'ble Apex Court and several Hon'ble High Courts in this regard. So, the appeal is allowed as follows:-

I) The impugned orders passed by the respondent vide Order No. *MDK-07/TSPCB/TF/HO/2016 828 dated 19.09.2020*, imposing Environmental Compensation of Rs. 8,31,60,000/- (Rupees Eight Crore Thirty One Lakh and Sixty Thousand Only) against the appellant unit in set-aside and the matter is remitted to the Board for passing fresh orders as observed by this Tribunal in this order as well as in the earlier order passed in Appeal No. 09 of 2020.

II) Telangana State Pollution Control Board is also directed to give one more opportunity to the appellant for personal hearing to explain their objections filed to the show cause notice issued

and thereafter consider the objections raised by them in the order to be passed in detail giving their reason as to why they are accepting or not accepting the same and arriving at the amount of compensation which is assessed against the appellant unit and pass appropriate fresh speaking/reasoned order.

III) The appellant is directed to appear before the Telangana Pollution Control Board on 17.11.2020 at 03.00 P.M. either personally or online as the case may be and, if it is online. it must be intimated the portal in which the hearing will be conducted and link must be provided to the appellant by the Telangana State Pollution Control Board, so as to enable them to log - in and attend the hearing.

IV) The Telangana State Pollution Control Board is directed to pass the final order in this regard in the matter within further period of 15 days from 17.11.2020 or if the hearing could not be conducted on 17.11.2020 for any reason then fifteen days from that date on which the hearing was conducted either by physical hearing or through virtual hearing as the case may be.

V) Considering the circumstances, the parties are directed to bear the respective cost in the appeal.

12. The Registry is directed to communicate this order to the respondent by e-mail immediately, so as to enable them to

comply with the direction issued by this Tribunal.

13. With the above directions and observations the appeal is disposed of.



.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Saibal Dasgupta)

**Appeal No. 27/2020(SZ) &
I.A. No. 104/2020 (SZ)
13.10.2020, Sr.**

NGT

Item No. 03

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Appeal No. 40/2020

Kee Diagnostics Pvt. Ltd.

Appellant

Versus

Delhi Pollution Control Committee

Respondent

Date of hearing: 09.10.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Appellant: Mr. Harpreet Singh Gupta, Advocate

ORDER

1. This Appeal has been preferred against order dated 10.07.2020 passed by the Delhi Pollution Control Committee (DPCC), requiring deposit of compensation of Rs. 3 lakhs for violation of provisions of the Water (Prevention and Control of Pollution) Act, 1974. Though by the said order, closure under Section 33 A of the Act was also passed, the same was later revoked on account of subsequent compliance.

2. Case of the appellant is that it is a MSME unit engaged in manufacturing of diagnostic Reagent Kits. The DPCC collected sample of waste water on 24.01.2020 from the unit of the appellant and the result of test showed minor deviation from prescribed standard. On that basis, impugned order was passed. The appellant complied with the norms and a new test was conducted on 20.07.2020 wherein compliance of norms

was established. On that basis, the direction for closure was revoked on 21.07.2020.

3. Contentions in appeal are that variation in norms was marginal. The sample was taken on 24.01.2020 but the result was given only on 12.06.2020. Due procedure for taking sample was not followed. The amount of compensation is disproportionate to the violation alleged.

4. We have considered the matter. We are of the view that having regard to the fact that the unit is a small one and violation was marginal which was later rectified to the satisfaction of the DPCC, we are of the view that compensation assessed is disproportionate. We indicated to the learned counsel for the appellant that having practical view of the matter, the appeal can be disposed of summarily by closing the matter by reducing the compensation to a token amount, instead of going into any other questions. We find this course will serve the interest of justice and hardship to the appellant.

5. Thus, having regard to the entirety of the matter, we reduced the compensation to Rs. 25,000/- and allow the appeal to that extent.

6. Since we have not issued notice to the DPCC, it will be open to the DPCC to approach the Tribunal if it is so aggrieved.

The Appeal is disposed of.

A copy of this order be forwarded to the DPCC by email.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

October 09, 2020
Appeal No. 40/2020
AK