

BEFORE THE NATIONAL GREEN TRIBUNAL

Memorandum of Appeal

(Under Section 18(1) read with Section 16 of the National Green Tribunal Act,
2010)

Appeal No. 23/2020

IN THE MATTER OF:

M/s Kisan Sahkari Chini Mills Ltd.

Bisalpur District- Pilibhit, Uttar Pradesh

...Appellant

VERSUS

The Member Secretary,

UP Pollution Control Board & Ors

...Respondent(s)

INDEX

S. No.	Particulars	Pg. Nos.
1.	Objections to Compliance Report filed by Joint Committee in Appeal No. 23 of 2020 along with Affidavit	1-13

Through



TARUN KHURANA

(Counsel for the Appellant)

Khurana & Khurana, Advocates & IP Attorneys

E-13, UPSIDC, Surajpur Site IV, Kasna

Greater Noida – 201310

Mob:

9555447633

Tarun@khuranaandkhurana.com

Place: Delhi

Date: 06.07.2021

BEFORE THE NATIONAL GREEN TRIBUNAL

Memorandum of Appeal

(Under Section 18(1) read with Section 16 of the National Green Tribunal Act, 2010)

Appeal No. 23/2020

IN THE MATTER OF:

M/s Kisan Sahkari Chini Mills Ltd.

Bisalpur District- Pilibhit, Uttar Pradesh

...Appellant

VERSUS

The Member Secretary,

UP Pollution Control Board & Ors

...Respondent(s)

OBJECTIONS TO COMPLIANCE REPORT FILED BY JOINT COMMITTEE IN APPEAL NO. 23 OF 2020

MOST RESPECTFULLY SHOWETH:

1. That vide order dated 12.04.2021 this Hon'ble Tribunal had held that *"we find that the joint Committee, except for inspection of M/s Rudra-Bilas Kisan Sahkari Chini Mills Ltd., Bilaspur, DistrictRampur, U.P. has not independently inspected other units but given a report based on earlier inspection by the State PCB. Thus, with regard to Appeal Nos. 23/2020, 24/2020, 28/2020 and 29/2020, the joint Committee may now conduct independent inspection and give a further report of the compliance status before the next date by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF."*

2. Further this Hon'ble Tribunal thereafter, Listed the Appeals Numbered: 23/2020, 24/2020, 28/2020 and 29/2020 for further consideration on 08.07.2021.
3. At the very outset, the contents as furnished in the Report is devoid of merit, and the same have been filed with no regards to the directions of this Hon'ble Tribunal. This Hon'ble Court had clearly stated that a "*the joint Committee may now conduct independent inspection and give a further report of the compliance status before the next date by e-mail at judicialngt@gov.in."*
4. This Hon'ble Court may be pleased to note that the directions issued by this tribunal were clear and specific, however, with utmost disregard to the Tribunals directions, the respondents have failed to submit a afresh report. Instead the respondents have submitted a report in compliance to the earlier order of this Hon'ble Tribunal dated 03.09.2020 and reiterated the same contentions as mentioned in their Letter dated 03.06.2020 which is also a part of the record and is marked as **Annexure A-5 (Page 40 -44)** in the Appeal.
5. Thus, there is a certain possibility, that the claims of the Report as stated by are misplaced in law, factual positioning and are not sustainable in letter or spirit, by virtue of which this Hon'ble Court had issued directions for "independent inspection".

6. It seems that the Respondents have not conducted an inspection rather submitted an old report. As the current report does not lay any **further report on compliance status** as directed by this Hon'ble Tribunal in its order dated 12.04.2021.
7. That this is not the first time the Respondents have produced a wrong factual positioning before this Hon'ble Tribunal. The whole premises of the appeal lie on the fact that the Respondents 1, 2 and 3 have not provided an adequate and logical reasoning to its arbitrary conclusion of fining the Appellant Rs. 15,20,000/-. Further, it is well settled principle of law that a speaking order should ensure that the principles of natural justice are followed.
- a. As held in "**Kishan Lal v. UOI [1998] 97 Taxman 556 (SC)**", a speaking order reduces arbitrariness. A reasoned order speaks for itself. It embodies in itself the principles of natural justice. In the case of **Asstt. Commissioner Commercial Tax Department, Works Contract and Leasing Quota v. Shukla & Bros. [2010] (4) JT 35**, the Supreme Court observed that it shall be obligatory on the part of the judicial or quasi-judicial authority to pass a reasoned order while exercising statutory jurisdiction. In the absence of a reasoned order, it would become a tool for harassment.
- b. In the case of "**Santosh Hazari v. Purushottam Tiwari [2001] (2) JT 407**", the Supreme Court held as under: "The appellate Court has

jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for hearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the Appellate Court.”

- c. In the case of “**Baidya Nath Sarma v. CWT [1983] 11 Taxman 158 (Gau.)**”, the Court observed as under: “...The duty to give reasons is a safety-valve against arbitrary exercise of discretionary power. If such quasi-judicial authorities are permitted to render order without reason, apart from arbitrariness there might be potent danger of non-consideration of the application and would encourage mechanical exercise of the power.”
- d. In “**Thakur V. Hariprasad v. CIT [1987] 32 Taxman 196 (AP)**”, the High Court held as follows: “The doctrine of natural justice is a facet of fair play in action. No person shall be saddled with a liability without being heard. In administrative law, this doctrine has been extended when a person is made liable in an action without being heard. The principles of natural justice do not supplant the law but merely supplement the law or even humanise it. If a statutory provision can be read consistent with the principles of natural justice, the court could do so, for the Legislature is presumed to intend to act according to the principles of natural justice.”

8. This Hon'ble Forum may please note that the present appeal was instituted by the Appellant to challenge the levy of Environmental Compensation on the Appellant by Respondents. The Appellants were alleged of carrying out industrial activity without complying to the parameters prescribed as per law. On this ground, an amount of Rs.15,20,000/- (Rupees Fifteen Lakh Twenty Thousand Only) was levied as Environment compensation vide Ref No. H50590/C-7/W-769/20 dated 03.07.2020 on the Appellants. However, the said order was absolutely arbitrary, had no facet of fair play in action and was without reasoning.

9. Having submitted the above, the Appellant would like to apprise this Hon'ble Forum of its strict objection against the joint report submitted by the Respondents. The objection are as follows:

a. The current joint report does not display anything in furtherance to what is stated in the Show-Cause Notice (Ref. No. H 49587/C-7/Jal-769/2020) dated 03.06.2020.

b. The said report is a gross violation of the order dated 12.04.2021. This Hon'ble Tribunal had clearly stated that a "*the joint Committee may now conduct independent inspection and give a further report of the compliance status before the next date by e-mail at judicialngt@gov.in.*"

- c. However, it may be observed that the report submitted by Amit Chandra – Chief Environment Officer – in nothing but a compliance for the sake of compliance. The report itself admits and states in compliance of the directions on 03.09.2020, the Joint Committee of CPCB and State PCB have examined the issue related to whether the appellant was compliant during the relevant period and the report in compliance of the directions was submitted. Hence clearly, till date, the respondents have not conducted an independent inspection, and therefore the question of a merit based report does not arise.
- d. None of the paragraphs in the report reflect any wrong doing by the Appellant except, Paragraphs (V). The remaining paragraphs are a matter of record, and are a part of the report, just stated for sake of compliance. The said paragraphs (i) to (ix) does not a warrant a reasoned conclusion. This Hon'ble Tribunal may observe that it is duty decision making authorities to give a reasons for conclusions, reasons are the safety-valve against arbitrary exercise of discretionary power. If srfuch quasi-judicial authorities are permitted to render order without reason, apart from arbitrariness there might be potent danger of non-consideration of the application, which is exactly what happened when the appellants tendered their response dated 19.06.2020. In the said response the appellants had stated that they had gotten the E.T.P out let water Testing conducted by 3rd Party NABL accredited Lab on 13.12.2019. The appellants had submitted

that the reports of the NABL reflected contradictory findings to the IIT Roorkee findings:

Class	Disposal Norms for irrigation as per CPCB	NABL Lab Test (mg/ltr)	IIT Roorkee, Report (mg/ltr)
TSS- Total Suspended Solids	100	143	10.80
BOD - Biological Oxygen Demand	100	19.50	Not ascertained
COD - Chemical Oxygen Demand	250	180.00	Not ascertained
Oil and Grease	10	4.56	Not ascertained
P.H	6.5-8.5	7.14	Not ascertained

- e. More Particularly, it may be noted that the Appellant even highlighted the fact, in its Reply to the Show-Cause notice, that the samples were collected by IIT Roorkee (the third party to whom the authority to inspect and collect samples was purportedly delegated) in gross violation of the procedure as prescribed under Section 11 of the Environment (Protection) Act, 1986 (hereinafter referred to as "Act"); and, Rules 6 through 8 of the Environment (Protection) Rules 1986 (hereinafter referred to as "Rules"),

as stands amended, inasmuch as, neither the sample was divided into 2 (two) Uniform Samples Parts, nor the Appellant was permitted to receive one of the said.

- f. Hence it is all the more important for this Hon'ble Tribunal to understand that "BOD" - Biochemical oxygen demand / biological oxygen demand, which is an important water quality parameter because it provides an index to assess the effect discharged wastewater will have on the receiving environment. The higher the BOD value, the greater the amount of organic matter or "food" available for oxygen consuming bacteria. Regulations permitting for biochemical oxygen demand effluent are maximum allowable by 100 mg/L BOD. The appellants fell at 19.50 mg/Litre. and maximum allowable concentrations for discharge to sewer systems around 300 mg/L BOD.
- g. Next important parameter to observe is the "COD" which is a general indicator of water quality . COD is prescribed not to be greater than 250 mg/l. In the current case the NABL lab tested the COD to be limited to 180 mg/litre. Similarly, without MLSS and SVI collection of sample, TSS cannot be determined to its accuracy. Hence, without having any mention of the said parameters of Disposal Norms, one cannot ascertain TSS factor completely and with accuracy.
- h. Lastly, this court may observe as to why did the Respondent issued a show cause notice after a span of 6 months. It is an admitted fact that the

inspection was carried out on 12.12.2019 whereas the notice for show cause was issued in June ,2020, i.e after the expiry of 6 months.

11. Therefore, for reasons in this objection, it may be concluded that the said Report has been passed without application of mind and is therefore bad in law. The said report is erroneous as it is on the premise that the Report, on the basis of Samples collected by the 3rd Party (IIT Roorkee) based on the inspection conducted is completely arbitrary and erroneous considering the fact that the Report issued by independent NABL Accredited Test Lab on 17.12.2019 clearly states that the ETP outlet has been functioning efficiently and effluent parameters are well within the discharge norms. Moreover, as per the rules, the samples collected during inspection shall be split in two parts and one part shall be handed over to the Mill Staff, that is, the Appellant herein. However, to much violation of the same, the Inspection team took signatures of the Appellant executives and did not provide a sample to the Appellant herein. The impugned report is erroneous, inasmuch as, the environmental compensation levied by the Respondent No. 1 for the period of 12.12.2019 through 26.02.2020 is erroneous in view of the fact that Vasantdada Sugar Institute (VSI) Pune, a nodal agency appointed and authorized by the Pollution Control board visited the Appellant's unit/plant on 19th December 2019; and, was pleased to report that all parameters of the effluent(s) were well within the

permissible limits and for this reason alone, the levy of environmental compensation for a period succeeding 19th December, 2019 amounts to undermining the authority of the VSI, Pune and controverting the veracity of report issued thereby.

PARAWISE – OBJECTION TO REPORT POINT 3(1) TO (IX)

12. **Paragraph No. 1 TO IV** -are duly admitted by the Respondents. Hence the same need not be replied.

13. **Paragraph No. 5** – The contentions mentioned in paragraphs 1 to 11 of the objections are heavily relied upon to contest the vague and evasive arguments forwarded by the respondent parties. Having failed to provide a reasoned order of levying fine for 76 days, the said report is an attempt is to hide its erroneous approach. The conclusion of the impugned report is on the premise that the appellant operated the unit in contravention of the permitted emission norms, wherein the Respondents erred by non-observation of the fact that the aforesaid permitted emission was always being complied. The appellant has produced in its appeal two reports (**Annexure 4 – Annexure 7**) which speaks contrary findings to the ones submitted by the IIT Roorkee. Lastly, presuming though not admitting, the Appellants were in violation, and were flouting the norms, why did the Respondent come back for a check-up after two months

to determine compliance, why not visit the premise on the very same week or after one month. Furthermore, the Respondents were always at liberty to revisit and ensure compliance, hence the computation concluded in the said report has no locus. The EC has been levied based on when the UPPCB came the first time (when the non-compliance was noted) and the second time (when no non-compliance was noted), and therefore the period of non-compliance is purely at the discretion of the UPPCB and had they come after 3 months, the EC would have been for a greater period and had they come after 1 month, the EC would have been for a shorter period, and therefore this basis of computation of EC based on when the UPPCB comes for inspection is clearly erratic and irrational. Even the formulae used for computation of the EC assumes the highest possible values that may be applicable, even though when IIT Roorkee came on 12.12.2019 for the inspection, only a single TSS value was found to be above the stipulated norm, which too has been contested as the location from where the sample was collected by IIT Roorkee has not been mentioned in any manner whatsoever.

Law does not permit a person to both approbate and reprobate. It somehow does not make any sense to presume that the respondents who were not given a sample, who were not made privy to the sample collection source, who out of doubt got their own testing done twice, that too from accredited and

Government organisation, could be held guilty for flouting the norms of emissions for 76 odd days when the evidence and documentation exists to the contrary. The doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage.

14. Paragraph No. vi to ix of the report are mostly records admitted by the Appellant and mentioned by the Appellant in his appeal. However, the appellant denies and vehemently opposes, the reasoning which lead to the conclusion of the Joint Report.


NISHEETH SHARMA

Authorized Signatory

Bisalpur Kisan Sahkari Chini Mill Ltd

Bisalpur (PILIBHIT)

Through



TARUN KHURANA

(Counsel for the Appellant)

Khurana & Khurana, Advocates & IP Attorneys

E-13, UPSIDC, Surajpur Site IV, Kasna

Greater Noida – 201310

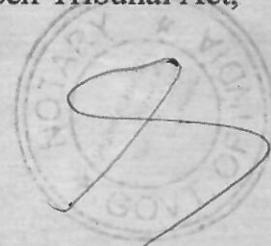
Mob: 9555447633

BEFORE THE NATIONAL GREEN TRIBUNAL

Memorandum of Appeal

(Under Section 18(1) read with Section 16 of the National Green Tribunal Act,
2010)

Appeal No. 23/2020



IN THE MATTER OF:

M/s Kisan Sahkari Chini Mills Ltd.

Bisalpur District- Pilibhit, Uttar Pradesh

...Appellant

VERSUS

The Member Secretary,

UP Pollution Control Board & Ors

...Respondent(s)

AFFIDAVIT

I, Nisheeth Sharma, S/o Late Surendra Kumar Sharma, aged about 60 years having office at Bisalpur Chini Mill, Bisalpur (Pilibhit) UP, presently at Greater Noida, being appointed by the Appellant, do solemnly affirm and swear as under:

1. That I am the authorised signatory in the present appeal and am competent to swear by this Affidavit.
2. That I have gone through the contents of the accompanying Objections and I state that the same are true and correct to the best of my knowledge.
3. That no part of it is false and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Bisalpur Kisan Sahkari Chini Mill Ltd
Bisalpur (PILIBHIT)

I, the deponent above named, do hereby verify that the contents of the foregoing affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therefrom.

DEPONENT

Bisalpur Kisan Sahkari Chini Mill Ltd
Bisalpur (PILIBHIT)

Verified at Gr. Noida on this the 6th day of July, 2021

Shri./Smt./Km. Nisheeth Sharma

S/o W/o / R/o Late Surendra Kumar Sharma

Identified by / Smt.

Has Affirmed Before Me at....

On 06/7/2021... Sr. No. 01/07/21.

That contents of the affidavit which

has explained to him are true

and his knowledge.....

Notary

I declare the deponent who has

Signed/put in my presence