

**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. 24 / 2020**

**IN THE MATTER OF:**

M/s Kisan Sahkari Chini Mills Ltd.

Gajraula, Hasanpur, Amroha, 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. 24 of 2020 along with Affidavit	1-15

**Through**

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Place: Delhi

Date: 06.07.2021

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**OBJECTIONS TO COMPLIANCE REPORT FILED BY JOINT  
COMMITTEE IN APPEAL NO. 24 / 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, District Rampur, 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](mailto: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](mailto: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 38 -41)** 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. 22,60,000/-. 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.22,60,000/- (Rupees Twenty Two Lacs Sixty Thousand Only) was levied as Environment compensation vide Ref No. H50674/C-7/W-139/20 dated 07.07.2020 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 49586/C-7/Jal-139/2020) 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) (VI). 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 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, which is exactly what happened when the appellants tendered their response dated 18.06.2020. In the said response the appellants had stated that they had gotten the E.T.P out let water Testing conducted by 3<sup>rd</sup> Party NABL accredited Lab on 07.02.2020. The appellants had submitted that the reports of the NABL reflected contradictory findings to the IIT Roorkee findings:

<b>Class</b>	<b>Disposal Norms for irrigation as</b>	<b>NABL Lab Test (mg/ltr)</b>	<b>IIT Roorkee, Report</b>

	per CPCB		(mg/ltr)
TSS- Total Suspended Solids	30	16.5	105
BOD - Biological Oxygen Demand	100	19.50	165
COD - Chemical Oxygen Demand	250	150.00	520
Oil and Grease	10	3.25	Not ascertained
P.H	6.5-8.5	7.31	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. Lastly, this court may observe as to why did the Respondent issue a show cause notice after a span of 4 months. It is an admitted fact that the inspection was carried out on 21.01.2020 whereas the notice for show cause was issued in June ,2020, i.e after the expiry of 5 months.

10. Therefore, for reasons in this objections, 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 3<sup>rd</sup> 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 12.02.2020 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.

Para- Wise Reply

11. **Paragraph No. 1 TO IV** -are duly admitted by the Respondents.

Hence the same need not be replied.

12. **Paragraph NO.VII and Paragraph No.VII** – That the contents of Paragraph 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. To the contrary of what is submitted in the report the Appellant had no option but to resort to collect the E.T.P. outlet water sample and get the same analysed by NABL Accredited Lab on 07.02.2020. To its much dismay, the Appellant was shocked to find out that the Report, on the basis of the sample(s) collected by the 3<sup>rd</sup> Party (IIT Roorkee), was erroneous. Needless to mention, even if one assumes, *arguendo*, that the said report was correct, the same cannot be considered as valid proof of Non-Compliance of ETP owing to flagrant violation of prescribed sampling procedures. The Parameters as inferable from the Test Report clearly outlines that the same were under prescribed norms stipulated. The copy of Waste Water Sample Analysis Report dated 12.02.2020, issued by NABL Accredited Lab is annexed as **ANNEXURE A-4** (Page

38). of the appeal. That the Respondents have failed to take into consideration the clarifications, to which the Respondent No. 1 has responded in the Show Cause Notice. In lieu of the Reports reference to Show Cause Notice as well the Environment Compensation Notice, it is brought to the kind attention of this Hon'ble Tribunal that the said Notices, on the face of it, are lacking substance. That the key reason for Non-Compliance as per the Respondent No. 1 was that the ETP Outlets were found to contain BOD – 165 mg/L, COD- 520 Mg/L and TSS – 105 Mg/L. However, upon conducting the test through NABL accredited lab, the Appellant found out that the readings were well within the prescribed norms and the Environment Compensation notice is completely erroneous in nature. The Appellant submits that on bare perusal of the Show Cause Notice, the intention of the 3<sup>rd</sup> Party (IIT Roorkee) seems to find faults which could not even be substantiated considering the erroneous sampling procedure. It is most pertinent to note that there has been no mention of the Mixed Liquor Suspended Solids (MLSS), Mixed Liquor Volatile Suspended Solids (MLVSS), Dissolved Oxygen (DO), Sludge Volume Index (SVI) and Sludge Bulging neither in the Show Cause Notice nor the Environment Compensation Notice. To give a brief overview to this Hon'ble Tribunal, Sludge Volume Index

(SVI) is an extremely useful parameter to measure in a wastewater treatment process. It takes into account the 30-minute settleability test result; and, the activated sludge mixed liquor suspended solids (MLSS) test result then comes up with a number (or index) that describes the ability of the sludge to settle and compact. The Sludge Volume Index (SVI) gives a more accurate picture of the sludge settling characteristics than settleability or Mixed Liquor Suspended Solids (MLSS) alone. The Sludge Volume Index (SVI) indicates the changes occurring in the activated sludge treatment process. It is most important to note that as per the report of Vaśantdada Sugar Institute (VSI), the Aeration Tank has been correctly designed with retention time of 29 hours. Filtration rate for designing of Multi Grade Filter (MGF) and Activated Carbon Filter (ACF) is suggested to be 160 L/m<sup>2</sup>/min or 10 m<sup>3</sup>/m<sup>2</sup>/hr. Whereas the installed Multi Grade Filter (MGF) and Activated Carbon Filter (ACF) is designed on much lower filtration rate of 88.5 L/m<sup>2</sup>/min. It is further submitted by the Appellant that the Duration of application of Environmental Compensation is objectionable, considering the fact that the effluent sample was collected by the Appellant on 07.02.2020 and the same was analysed by the NABL accredited Test Lab. The report dated 12.02.2020 explicitly states that ETP has been discharging effluent

within the prescribed limits/discharge norms. Therefore, it is respectfully submitted before this Hon'ble Tribunal that the calculation of days with respect to the Non – Compliance till 13.05.2020 as per the Environmental Compensation Notice is rather preposterous and arbitrary in nature.

13. **Paragraph vi to x** 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.

  
**MAHIPAL SINGH**  
Authorized Signatory

**Through**

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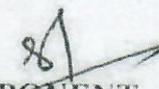
UP Pollution Control Board & Ors

**...Respondent(s)**

**AFFIDAVIT**

I, Mr. Mahipal Singh, S/o Sh. Solu Singh Chauhan, aged about 56 years having office at KSCM Ltd, Gajraula – Hasanpur (Amroha) 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**



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.  
Verified at Gr. Noida on this the 6<sup>th</sup> day of July, 2021

  
~~DEPONENT~~

(CERTIFIED THAT THE DEPONENT)  
Shri./Smt./Km. Manish Singh  
S/o W/o/ D/o. Solu Singh Chauhan  
R/o.....  
Identified By Shri. / Smt.....  
Has solemnly Affirmed Before Me at....  
On. 07/07/2021 Sr. No. 01/07/07  
That the Contents of the affidavit Which  
have been read & explained to him are true  
and correct to his knowledge.....  
Notary



I identified the deponent who has  
Signed/put in my presence