

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

APPEAL NO. 27/2024 (WZ)

IN THE MATTER OF: -

SAMRUDHI SUGAR LIMITED

APPELLANT

VERSUS

CENTRAL POLLUTION CONTROL
BOARD & ORS.

RESPONDENTS

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(Pratik D. Bharne)

Regional Director

Place: Pune

Date: 16/09/2024

क्षेत्रीय निदेशक / Regional Director
केंद्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
क्षेत्रीय निदेशालय, पुणे / Regional Directorate, Pune
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार
M/o Env't. Forest & Climate Change, Govt. of India
सर्वे नं. ११०, हीराबाई धनकुडे हॉल, बाणेर रोड, बाणेर, पुणे - 411045
Sr. No. 110, Hirabai Dhankude Hall, Baner Road, Baner, Pune-411045

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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APPEAL NO. 27/2024 (WZ)

IN THE MATTER OF: -

SAMRUDHI SUGAR LIMITED

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CENTRAL POLLUTION CONTROL
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RESPONDENTS

REPLY ON BEHALF OF CENTRAL POLLUTION CONTROL
BOARD (CPCB) i.e. RESPONDENT NO.1

1. That, the Hon'ble National Green Tribunal (NGT) vide order dated 25.04.2024 has sought the reply of Answering Respondent No. 1 (hereinafter referred to as "CPCB" or "Answering Respondent") in the instant matter. Thereby, the reply is made in succeeding paragraphs.
2. That, CPCB is a Statutory Board constituted under Section 3 of The Water (Prevention and Control of Pollution) Act, 1974. It performs the functions under The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and control) Act, 1981 and The Environment (Protection) Act, 1986.
3. That the Ministry of Environment, Forest and Climate Change (MoEF&CC), Govt. of India, vide notification S.O.157(E) of 27.02.1996 has delegated powers vested under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986) to the Chairman, CPCB, to issue direction to any Industry, Municipal Corporation, Municipal Council, Cantonment Board or to any local or other Authority for the violation of emission and effluent standards notified under the Environment (Protection) Rules, 1986; and

4. That the present Appeal has been filed against the directions dated 04.01.2024 issued by Respondent No.1- CPCB under Section 5 of the Environment (Protection) Act, 1986 for imposing Environmental Compensation of Rs.1,27,20,000/- (Rs. One Crore Twenty-Seven Lakhs Twenty thousand) upon the Appellant for the delay in installation of real-time online continuous effluent monitoring system (hereinafter referred as 'OCEMS') at the Effluent Treatment Plant (ETP) and its connectivity to CPCB server.

PARAWISE REPLY

5. That no comments are offered by this Answering Respondent over the averments made at Para No. 1 & 2 of the instant appeal being factual information based on the knowledge of the Appellant.
6. That no comments are offered by this Answering Respondent over the averments made at Para No.3 of the instant appeal being Appellant Memorandum of Appeal.
7. That averments contained in the Para No 4 (i, ii, iii, iv & viii) of the instant Appeal is regarding the Direction, dated 04.01.2024, issued under Section 5 of Environment (Protection) Act, 1986 by this Answering Respondent i.e CPCB to the Appellant i.e. M/s Samrudhi Sugar Limited, Dist: Jalna, Maharashtra (herein after referred as "The Unit") to deposit an Environmental Compensation of Rs. 1,27,20,000/- for operating their industry during crushing season 2017-18, 2018-19, and 2019-20 without installation and connectivity of real-time OCEMS devices with CPCB server and notwithstanding CPCBs closure direction dated 22.03.2016, regarding the description of cost of effluent and emission monitoring equipment's and filing of appeal with 09 days delay.

In this regard it is humbly submitted that Environmental Compensation of Rs. 1,27,20,000/- has rightly been imposed on the erring unit, by following due process, for violating the CPCBs closure direction dated 22.03.2016 and for operating their industry during crushing season 2017-18, 2018-19, and 2019-20 without installation and connectivity of real-time OCEMS (online continuous effluent monitoring system) with CPCB server.



8. That averments contained in the Para No 4 (v, vi & vii) of the instant appeal is about six monthly operation of Sugar Industry and contains allegation w.r.t. incorrect calculation of non-compliance period i.e. 424 days and MPCB circular dated 12.07.2021 regarding imposition of penalty.

It is humbly submitted that the averments are completely false and are hereby denied in totality by this Answering Respondent. It is further humbly submitted that the non-compliance period is calculated for only those days in which the Appellant Unit is operational during the crushing season of 2017- 18, 2018- 19, and 2019-20 without installation and connectivity of OCEMS devices with CPCB server and notwithstanding CPCBs closure direction dated 22.03.2016. The non-compliance period is 166 days during crushing season 2017-18 (07.11.2017- 21.04.2018), 158 days during crushing season 2018-19 (27.10.2018- 02.04.2019) and 100 days during crushing season 2019-20 (01.12.2019 to 09.03.2020). The same is based on the submission of Final Manufacturing Report for the Crushing Season: 2017-18, 2018-19 & 2019-20.

It is also humbly submitted that, Maharashtra Pollution Control Board (MPCB) and CPCB have been entrusted to perform different types of functions and duties under The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and control) Act, 1981 & The Environment (Protection) Act, 1986 and both work independently in their respective jurisdiction. Further, it is humbly submitted that the Appellant is trying to mix two issues. CPCB has issued impugned directions under Section 5 of the Environment (Protection) Act, 1986 whereas continuing the operations without obtaining consent from MPCB, action is initiated by MPCB under Water and Air Act, which is not subject matter of the present appeal and subject matter dispute of present appeal is limited to directions issued by CPCB under Section 5 of the E(P)Act, 1986.

9. That averments contained in the Para No 5(a) of Grounds of the instant Appeal, are regarding the alleged fact of not providing any opportunity of hearing to the Appellant.

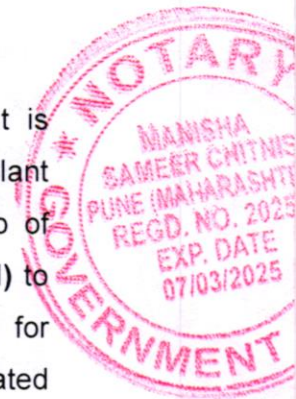
It is humbly submitted that, the averment is false and denied in totality. It is humbly submitted that a personal hearing was already accorded to the Appellant Unit through Video Conferencing (VC) on 11.07.2023 under the Chairmanship of Member Secretary, CPCB. CPCB issued a letter dated 22.08.2023 (**Annexure-I**) to the Appellant Unit along with copy of Minutes of the meeting (**Annexure-II**) for compliance. During the meeting, the Unit admittedly agreed that they operated without installation/connectivity of OCEMS and without seeking revocation of closure directions of CPCB. The Unit also agreed that they have operated without valid consent to operate from the MPCB. The relevant points of the Minutes are mentioned below:

- i. Environmental Compensation levied on the Unit cannot be waived off in the circumstances mentioned by the Unit.
- ii. The Unit shall deposit Environmental Compensation of Rs 1,27,20,000/- (Rupees One-crore twenty-seven Lacs and twenty thousand only) in CPCB account for a period of 424 days of non-compliance. However, if the Unit has any claim of operating less than 424 days during the period of non-compliance, proof of the same shall be provided within 15 days.
- iii. In case the Unit has any claim differing to the no. of days EC assessed by CPCB, the Unit may provide documentary evidence of operating days between 22.03.2016 to 12.02.2020.

Further, It is humbly submitted that, the Unit has neither provided any documentary evidences nor submitted any objections to CPCB w.r.t. difference in no. of days of operation as per above Minutes of Meeting which concludes that the Unit has no objection towards the said calculation of 424 days w.r.t operation of their Unit without consent to operate.

10. That averments contained in the Para No 5(b & c) of Grounds of the instant appeal, states that Principle of Natural Justice was allegedly not followed and alleged non-consideration of submissions made by the Appellant.

It is humbly submitted that the averments are completely false and are hereby denied by this Answering Respondent in totality. It is further humbly submitted that



due process in entirety was followed for levying of Environmental Compensation (EC) on the appellant unit. A Show Cause Notice (SCN) dated 08.02.2023 (**Annexure-III**) was issued to the Appellant Unit to show cause why Environmental Compensation of Rs. 1,27,20,000 should not be levied on the Unit for 424 days of violation i.e. running their manufacturing operations during crushing season 2017-18, 2018-19, and 2019-20 without installation and connectivity of real time OCEMS devices with CPCB server and notwithstanding CPCBs closure direction dated 22.03.2016. Further, an opportunity of personal hearing was also accorded to the Unit on 11.07.2023 as provided at Para 9 of this reply Affidavit. After giving complete opportunity to the Unit to file its reply and judiciously considering the reply submitted by the Unit, the final direction for deposition of Environmental Compensation (EC) was issued to the Unit on 04.01.2024 (**Annexure- IV**).

11. That averments contained in the Para No 5 (d, e, f, h, i, j, k & l) of Grounds of the instant appeal are about the amount of EC imposed and appellant's alleged submission that the amount of Environmental Compensation (EC) is without any logic.

It is humbly submitted that the averments are completely false and are hereby denied by this Answering Respondent. It is further humbly submitted that CPCB in its direction dated 04.01.2024 to the Appellant regarding levying of EC, it has been mentioned that in compliance of the Hon'ble National Green Tribunal (hereinafter referred to as NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors., a Committee was constituted by CPCB for preparing report on methodology for assessing Environmental Compensation (EC). That the report titled 'Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund' of the aforesaid Committee was submitted before the Hon'ble NGT. The aforesaid report was accepted by Hon'ble NGT vide its order dated 28.08.2019. That the EC amount was calculated based on guidelines and formula mentioned in the aforesaid report. The Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund is also available on CPCB website under <https://cpcb.nic.in/uploads/report-15.07.2019.pdf>. Based on the said report, CPCB as well as SPCBs are calculating the Environmental



Compensation.


12. That averments contained in the Para No 5 (m, n, o, p, r, s, t & u) of Grounds of the instant appeal, is about the appellant submission that no violation of standard, pollution and damage to the environment has been done by the Unit.

It is humbly submitted that, in compliance of Hon'ble NGT order in OA No. 593/2017 titled "*Paryavaran Suraksha Samiti & Anr. Vs Union of India & Ors*", a Committee was constituted by CPCB for developing a formula for imposing environmental compensation on industrial Units whereby the said Committee identified the cases /list of instances for levying Environmental Compensation. As per the Committee recommendations one of the cases to be considered for levying environmental compensation is "*not complying with the directions issued, such as direction for closure due to non- installation of OCEMS (online continuous effluent/emission monitoring system), non-adherence to the action plans submitted etc*".

It is further humbly submitted that, due procedure was followed for imposition of Environmental Compensation and a Show Cause Notice was already issued to the appellant Unit vide letter dated 14.02.2023 wherein the reason for imposition of Environmental Compensation (EC) was already mentioned and thereafter a personal hearing was also provided to the Unit on 11.07.2023.

13. That averments contained in the Para No 5 (q) of Grounds of the instant appeal, states about the submission of appellant that the online instruments for measurement of treated effluent and stack emissions are already installed, commissioned and operative.

It is humbly submitted that EC of Rs. 1,27,20,000 has been imposed for 424 days of violation i.e. running their manufacturing operations during crushing season 2017-18, 2018-19, and 2019-20 without installation and connectivity of real time OCEMS devices with CPCB server and notwithstanding CPCBs closure direction dated 22.03.2016. It is further humbly submitted that, no EC has been levied on the appellant Unit for any period after 24.08.2020 i.e. after the connectivity of real-time OCEMS devices to CPCB server.

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14. That no comments are offered by this Answering Respondent over the averments made at Para No. No 6 & 7 of the instant appeal being matter of records.
 15. That averments contained in the Para No 8 of the instant appeal are regarding personal hearing allegedly not being granted to the appellant.

It is humbly submitted that, the averment is false and is denied in totality. Additionally, the Answering Respondent reiterates the submission made at Para 9 of this reply and is not repeated herein for the sake of brevity.

16. That averments made at Para No 9, 10 & 11 of the instant appeal is about therequest of the appellant industry for additional time of three weeks for submission of information/response to CPCB.

It is humbly submitted that the Answering Respondent reiterates the submission made at Para 9 of this Reply Affidavit.

17. That averments contained in the Para No. 12, 13, 14, 15 & 16 of the instant appeal is regarding Precautionary Principle and polluters pay principle.

In this regard, the Answering Respondent herein reiterates the submission made in preceding paragraphs of this reply and the same are not repeated herein for the sake of brevity.

18. That no comments are offered by this Answering Respondent over the averments made at Para No. 17 of the instant appeal being matter of records i.e. 'Consent to Establish' granted under Water Act and Air Act by Maharashtra Pollution Control Board (MPCB) to the Appellant.

19. That averments contained in the Para No. 18 of the instant Appeal is regarding alleged overlapping of jurisdiction of CPCB and MPCB and submission of appellant of not being a fit case where CPCB should use its power under Section 5 of E (P) Act 1986.

It is humbly submitted that the jurisdiction of CPCB and MPCB is not overlapping

and the Ministry of Environment, Forest & Climate Change, Govt. of India, vide notification S.O.157(E) of 27.02.1996 has delegated powers vested under Section 5 of the Environment (Protection) Act, 1986 (29 of 1985) to CPCB to issue direction to any industry, Municipal Corporation, Municipal Council, Cantonment Board or to any local or other Authority for the violation of emission and effluent standards notified under the Environment (Protection) Rules, 1986 and other standards.

20. That averments contained in the Para No. 19 of the instant appeal is regarding amount of Compensation allegedly being very high as compared to the cost of OCEMS device.

It is humbly submitted that, the Environmental Compensation (EC) to be levied is directly proportional & is directly related to the Scale of Operation, Pollution Index and Period of Non- Compliance. It is to be noted that the Appellant Unit was in operation continuously during crushing season 2017-18, 2018-19, and 2019-20 without installation and connectivity of OCEMS devices with CPCB server and not withstanding CPCBs closure direction dated 22.03.2016. Hence, the amount of EC is justified.

21. That averments contained in the Para No. 20 & 21 of the instant appeal is regarding the reasonable EC amount suggested by the appellant.

It is humbly submitted that in this regard the Answering Respondent reiterate the same as submitted at Para no. 11, 12, 13 and 20 of this reply and is not repeated herein for the sake of brevity.

22. That averments contained in the Para No. 22 to 28 of the instant appeal is regarding the summary of the above averments.

In this regard, the Answering Respondent herein reiterates the submission made in preceding paragraphs of this reply and the same are not repeated herein for the sake of brevity.

23. That no comments are offered by this Answering Respondent over the averments



made in Para No. 29 of the instant appeal being the prayers made by the Appellant.

24. That, it is prayed by this Answering Respondent that, the above Appeal 27/2024 filed in the Hon'ble Tribunal do not merit any discussion/consideration and is liable to be dismissed at this stage only.

It is humbly submitted that the Environmental Compensation (EC) has been imposed on the Appellant unit by following complete due process of natural justice whereby a Show Cause Notice was issued before imposition of Environmental Compensation (EC) and thereafter an opportunity of personal hearing was also accorded to the appellant Unit.

Further, it is humbly submitted that Hon'ble NGT in similar type of cases previously filed in the past have been duly disposed by this Hon'ble Tribunal. The orders passed in similar type of prominent appeals are placed below for kind consideration:

I. **Appeal No. 33/2020 (WZ), Sadashivrao Mandlik Kagal Taluka Sahakari Sakhar Karkhana Ltd. Vs Central Pollution Control Board.**

The appeal was filed by the Appellant Sadashivrao Mandlik Kagal Taluka Sahakari Sakhar Karkhana Ltd. against CPCB order dated 20.12.2019 regarding deposition of EC due to start of manufacturing operation without installation and connectivity of OCEMS devices with CPCB server and notwithstanding CPCBs closure direction. The Unit moved to Hon'ble NGT to challenge the order dated 20.12.2019. The Hon'ble NGT vide order dated 03.08.2022 (**Annexure-V**) dismissed the appeal and stated:

" 27. All these queries could not be answered appropriately and convincingly. Therefore, we are of the view that from the perusal of evidence which has come on record that the Appellant does appear to have failed in its duty to transmit data to the Respondents for the aforesaid period of 20 days and we do not find any infirmity in the impugned order whereby compensation is slapped against the Appellant."

II. **Appeal No. 39/2020 (WZ), Shri Sant Damaj Sahakari Sakhar Karkhana Ltd.**



Vs Central Pollution Control Board.

The appeal was filed by the Appellant Shri Sant Damaji Sahakari Sakhar Karkhana Ltd. against CPCB order dated 17.12.2019 regarding deposition of environmental compensation (EC) due to start of manufacturing operations without installation and connectivity of OCEMS devices with CPCB server and notwithstanding CPCBs closure direction. The Unit moved to Hon'ble NGT to challenge the order dated 17.12.2019. The Hon'ble NGT vide order dated 17.08.2022 (**Annexure-VI**) dismissed the appeal and stated:

"...10. In response from the side of Respondents it is vehemently argued that merely installing and commissioning of Online Continuous Effluent Monitoring System (OCEMS) would not be sufficient in this case, because it was the duty of the Appellant to ensure that the data was transmitted to Respondents. In the present case, the Appellant did not ensure transmission of data for the afore-mentioned period which is calculated to be 63 days and calculation of EC is assessed on the basis of ratio laid down in Paryavaran Suraksha Samiti & Anr. Vs Union of India & Ors by the Tribunal. Hence, it cannot be said that any irregularity or illegality has been committed on the part of Respondents in assessing the environmental loss."

III. Appeal No. 40/2020 (WZ), Bhairavnath Sugar Works Ltd. Vs Central Pollution Control Board.

The appeal was filed by the Bhairavnath Sugar Works Ltd. (Appellant) against CPCB order dated 18.12.2019 regarding deposition of EC due to start of manufacturing operations without installation and connectivity of OCEMS devices with CPCB server and notwithstanding CPCBs closure direction. The Unit moved to Hon'ble NGT to challenge the order dated 18.12.2019. The Hon'ble NGT vide order dated 03.08.2022 (**Annexure-VII**) dismissed the appeal and stated:

"...14. All these queries could not be answered appropriately and convincingly. Therefore, we are of the view that from the perusal of evidence which has come on record, the Appellant does appear to have failed in his duty to

transmit data to the Respondents for the aforesaid period of 29 days and we do not find any infirmity in the impugned order whereby compensation is slapped against the Appellant."

- 25. That in light of the above submission, it is respectfully submitted that heHon'ble Tribunal may kindly reject/dismiss the present appeal and this Answering respondent i.e. CPCB, shall abide by any order(s) or direction(s) passed by this Hon'ble tribunal in the instant Original Application.

Pratik Bharne

Pratik Bharne

(Scientist 'E' & Regional Director)

CPCB, RD, Pune

क्षेत्रीय निदेशक / Regional Director

केंद्रीय प्रदूषण नियंत्रण बोर्ड

Central Pollution Control Board

क्षेत्रीय निदेशालय, पुणे / Regional Directorate, Pune

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार

M/o Env't. Forest & Climate Change, Govt. of India

सर्वे नं. ११०, हीराबाई धनकुडे हॉल, बाणेर रोड, बाणेर, पुणे - 411045

Sr. No. 110, Hirabai Dhankude Hall, Baner Road, Baner, Pune-411045

Noted & Registered
At Sr.No. 832/2024

BEFORE ME

Manisha Sameer Chitnis

MANISHA SAMEER CHITNIS
NOTARY
GOVERNMENT OF INDIA

16 SEP 2024





BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

APPEAL NO. 27/2024 (WZ)

IN THE MATTER OF: -

SAMRUDHI SUGAR LIMITED

APPELLANT

VERSUS

CENTRAL POLLUTION CONTROL
BOARD & ORS.

RESPONDENTS

AFFIDAVIT

I, Pratik D. Bharme, for and on behalf of the Respondent no.1, aged about 51 years, working as Scientist 'E' & Regional Director in Central Pollution Control Board, Regional Directorate, Survey No. 110, Hirabai Dhankude Multipurpose Hall, Baner Road, Baner, Pune – 411045, do hereby solemnly affirm, declare on oath and state as under:

1. That I am fully conversant with the facts of the case and hence, competent and authorized to depose and swear the present affidavit in my official capacity.
2. That the contents of the reply are true and correct on the basis of the record of the case as maintained in the day-to-day affairs of the CPCB and the contents of the reply may kindly be treated part of this affidavit and the same are not repeated herein for the sake of brevity.

क्षेत्रीय निदेशक / Regional Director
केंद्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
क्षेत्रीय निदेशालय, पुणे / Regional Directorate, Pune
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार
M/o Env't. Forest & Climate Change, Govt. of India
सर्वे नं. ११०, हीराबाई धनकुडे हॉल, बाणेर रोड, बाणेर, पुणे - 411045
Sr. No. 110, Hirabai Dhankude Hall, Baner Road, Baner, Pune-411045

Pratik D. Bharme
DEPONENT



VERIFICATION

It is verified that the content of this Reply Affidavit which is based on official record and information available in the office are true and correct. Nothing has been concealed therein.

Signed and verified at Pune on this.....16th.....Day of September, 2024.

Prakash

DEPONENT - Respondent No. 1

क्षेत्रीय निदेशक / Regional Director
केंद्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
क्षेत्रीय निदेशालय, पुणे / Regional Directorate, Pune
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार
M/o Env't. Forest & Climate Change, Govt. of India
सर्वे नं. ११०, हीराबाई धनकुडे हॉल, बाणेर रोड, बाणेर, पुणे - 411045
Sr. No. 110, Hirabai Dhankude Hall, Baner Road, Baner, Pune-411045

Counsel for Respondent No.1



Noted & Registered
At.Sr.No. 5331/2024



BEFORE ME

Manisha

MANISHA SAMEER CHITNIS
NOTARY
GOVERNMENT OF INDIA

6 SEP 2024



By Speed Post

CP-11/99/2022-IPC-III-HO-CPCB-HO 3449

August 22, 2023

To,

M/s Samrudhi Sugars Ltd
G. NO-122,123 and 173,
Devi Dahegaon, Tal. -
Ghansawangi Dist -Jalna,
Maharashtra - 431209

Sub: CPCBs direction dated 08.2.2023 issued u/s of E(P) Act ,1986 for deposition of Environmental Compensation of Rs. 1,27,20,000/- Regd.

Sir,


This has reference to your request vide letter no. SSL/03/2022-23 dated 24.03.2023 against the CPCB direction dated 08.2.2023 to deposit EC in CPCB. In this context an opportunity of personal hearing was given to the unit on July 11, 2023 through VC. After personal hearing and considering the views of the unit, it was resolved that EC amount levied on the unit cannot be waived off. However, if the unit has any claim of operating less than 424 days during the period of non-compliance, proof of the same may be provided within 15 days but no response has been received in this office till date. The minutes of the meeting is enclosed for your reference.

In view of above, you are requested to deposit the EC amount of Rs. 1,27,20,000/- to CPCB account No. 532702050000164 (Bank name: Union Bank of India, I.P. Extn Branch, Vikas Marg Extn., Delhi; IFSC UBIN0553271). Also note that as per the Hon'ble NGT order dated December 6, 2018 in O.A No.125/2017, it has been decided that an annual interest @12 % shall be levied to defaulting industries which have delayed the deposition of EC. Also, the unit shall not operate without valid Consent under the Water Act, 1974, Air Act, 1981 and Authorization under Hazardous & other Wastes Rules, 2016 issued by SPCB. In case of default in compliance with the above directions, CPCB will be constrained to initiate actions against the unit [M/s Samrudhi Sugars Ltd, G. NO-122,123 and 173, Devi Dahegaon, Tal. Ghansawangi Dist -Jalna, Maharashtra] without giving any further notice, in accordance with provisions of the Environment (Protection) Act, 1986.

Encl: As above

Yours faithfully


(Kamlesh Singh) o/c
Divisional Head - IPC-III


'परिवेश भवन' पर्वी अर्जुन नगर, दिल्ली-110032


Parivesh Bhawan, East Arjun Nagar, Delhi-110032

दूरभाष/Tel : 43102030, 22305792, वेबसाइट/Website : www.cpcb.nic.in

Copy to:

1. **The Member Secretary,** : For information and
Maharashtra Pollution Control Board, necessary action please
Kalpataru Point, 3rd and 4th floor, Opp.
PVR Cinema, sion Circle, Mumbai-400 022.

2. **The Regional Directorate-Pune,** : For information and
Central Pollution Control Board, necessary follow-up action
Survey No. 110, Dhankude Multi-Purpose please.
Hall, Baner Road, Baner,
Pune - 411045


(Kamlesh Singh) o/c

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
निर्गत.....*NS Singh*.....
दिनांक.....*24/8/2023*.....

o/c

Minutes of the meeting of the Personal Hearing held on 11.07.2023 at 2:30 PM, through Video Conferencing for providing an opportunity to the Industries to give their viewpoints before imposition of Environmental Compensation.

The meeting of the aforesaid Committee constituted for considering the view points of the units was held on **11.07.2023 at 2:30 PM**, through Video Conferencing. The following Members/Officials attended the meeting:

S. No.	Members of the Committee	
1.	Dr. Prashant Gargava, Member Secretary, CPCB	Chairperson
2.	Mr. B. Vinod Babu, Divisional Head, IT Division	Member
3.	Mr. Kamlesh Singh, Divisional Head, IPC-III, CPCB	Member
4.	Mr. Rishabh Srivastava, Scientist C, IPC-III Division	Attendee
5.	Representative from M/s Samrudhi Sugars Ltd (Sugar Unit)	Invitee
6.	Representative from M/s India Postah Ltd (Sugar Unit)	Invitee

Following is the record of discussion:

The agenda item of following industries were placed before the Committee:

1. M/s Samrudhi Sugars Ltd, Renekanagar, Village Devidahegaon, Post Macchindra Chincholi, Tal. Ghansawangi, Dist. Jalna, Maharashtra-431209.
2. M/s Indian Potash Ltd, (Sugar Division), Unit- Siswa Bazar, Maharajganj, Uttar Pradesh-273164.

Agenda 1: M/s Samrudhi Sugars Ltd, Renekanagar, Vill: Devidahegaon, Post Macchindra Chincholi, Tal. Ghansawangi, Dist. Jalna, Maharashtra - 431209.

A Show Cause Notice dated 08.02.2023 was issued to the unit asking why EC of Rs 1,27,20,000/- (Rupees One-crore twenty-seven Lacs and twenty thousand only) for 424 days violation should not be levied on the unit, as the Unit was operated in crushing seasons (2017-18, 2018-19 & 2019-20) despite CPCB's closure direction dated 22.03.2016.

The Unit replied vide letter dated 24.03.2023 and submitted that they have suffered financial loss during the FY 2015-16 and the unit was closed during FY 2016-17 due to NPA of loan accounts and legal recovery by Bank. The unit submitted that they had placed purchase order of OCEMS in 2017-18, however the connectivity could be established with CPCB server only on 12.02.2020.

The unit agreed that they operated without installation/connectivity of OCEMS and without seeking revocation of closure directions of CPCB. The Unit also agreed that they have operated without valid Consent to Operate from Maharashtra Pollution Control Board in violation of the Water/Air Acts.

In view of factual position on record, the Committee recommended the following:

1. Environmental Compensation levied on the Unit cannot be waived off in the circumstances mentioned by the unit.
2. The Unit shall deposit Environmental Compensation of Rs 1,27,20,000/- (Rupees One-crore twenty-seven Lacs and twenty thousand only) in CPCB account for a period of 424 days of non-compliance. However, if the unit has any claim of operating less than 424 days during the period of non-compliance, proof of the same shall be provided within 15 days.
3. The Unit shall not operate without valid Consent under the Water Act, 1974, Air Act, 1981 and Authorization under Hazardous & other Wastes Rules, 2016 issued by SPCB.
4. In case the unit has any claim differing to the no. of days EC assessed by CPCB, the unit may provide documentary evidence of operating days between 22.03.2016 to 12.02.2020.

Agenda 2: M/s Indian Potash Ltd, (Sugar Division), Unit - Siswa Bazar, Maharajanj, Uttar Pradesh-273164.

A Show Cause Notice dated 22.02.2023 was issued to the unit asking why an EC of Rs 1,11,90,000/- (Rupees One-crore Eleven Lacs and Ninety thousand only) as the Unit has operated in crushing season (2019-20, 2020-21, 2021-22 & 2022-23) despite CPCB's closure direction dated 15.05.2019.

It is informed to the Committee that the Unit was found by-passing the untreated effluent during the inspection on 11.04.2019 (based on which closure direction dated 15.05.2019 was issued) and the unit was again found bypassing the untreated effluent during the verification carried by CPCB RD Lucknow on 16.11.2022. The Unit has carried out operations in crushing season (2019-20, 2020-21, 2021-22 & 2022-23) without seeking permission from CPCB which is violation of closure direction issued by CPCB on 15.05.2019.

The Unit vide its letter dated 14.03.2023 replied to SCN dated 22.02.2023, however the justification regarding operation of Sugar Unit without revocation of closure direction by CPCB. The unit informed that they have submitted a reply against closure direction dated 15.05.2019 and due to no response from CPCB, they had assumed that their revocation direction has been deemed revoked and they started the manufacturing operations.

The Unit informed that they are complying with discharge standard as per the inspection conducted by SPCB during previous crushing season and also has valid consent to operate issued by the SPCB for each crushing season.

In view of arguments made by Unit, the Committee recommended the following:

1. The Unit should provide the copy of reply submitted against CPCB closure direction dated 15.05.2019 along with supporting documents like copy of receipt of registered post, through which reply was submitted.
2. The Unit may submit the supporting documents regarding inspections and compliance reports carried out by UPPCB, if any during the period of closure direction.
3. The Unit shall submit the Consent to operate for each crushing season since 2019-20.
4. The Unit should not start its manufacturing operations in next crushing season without seeking revocation of closure directions from CPCB.

5. The IPC-III division may analyze the documents provided by the Unit and process the the case accordingly.

Meeting ended with vote of thanks.



o/c 254

Annexure- III

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE GOVT. OF INDIA

BY REGISTERED AD

CP-11/99/2022-IPC-III-HO-CPCB-HO | 851A

February 08, 2023
14

To,

M/s Samrudhi Sugars Ltd,
G. NO-122,123 and 173,
Devi Dahegaon, Tal. -
Ghansawangi Dist -Jalna,
Maharashtra - 431209

Sub: Directions under Section 5 of the Environment (Protection) Act, 1986

WHEREAS, Sugar industries are identified as one of the 17 categories of highly polluting industries which have been discharging environmental pollutants directly or indirectly into the ambient air and water, having potential threat to cause adverse effect on the water and air quality; and

WHEREAS, for strengthening the monitoring and compliance through self-regulatory mechanism, a direction under section 18 (1) (b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 was issued on February 05, 2014 to all the State Pollution Control Boards (SPCBs)/ Pollution Control Committees (PCCs) for installation of online emission monitoring system w.r.t. Particulate Matter parameter & online effluent monitoring system w.r.t. pH, BOD, COD, TSS, Flow parameters in 17 categories of industries including Sugar; and

WHEREAS, considering the requests/ representations received from industries/ industrial associations/ SPCBs / PCCs, an extension of time up to June 30, 2015 for installation of online monitoring systems was granted vide direction dated March 02, 2015 under section 18 (1) (b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981; and

WHEREAS, in follow up to the directions issued to the SPCBs/PCCs, CPCB had issued show cause notices under section 5 of the Environment (Protection) Act, 1986 dated 24.07.2015 to 602 Sugar industries, including M/s Samrudhi Sugars Ltd, G. NO-122,123 and 173, Devi Dahegaon, Tal.-Ghansawangi Dist - Jalna, Maharashtra - 431209, hereinafter referred to as 'the Unit', as to why the Unit should not be closed down if the Unit has not complied fully with the direction issued w.r.t. installation of online emission & effluent monitoring system by June 30, 2015. It was further directed to submit documentary evidence regarding status of installation and connectivity of online emission & effluent monitoring system; and

Signature

'परिवेश भवन' पूर्वी अर्जुन नगर, दिल्ली-110032
Parivesh Bhawan, East Arjun Nagar, Delhi-110032

दूरभाष/Tel : 43102030, 22305792, वेबसाइट/Website : www.cpcb.nic.in

WHEREAS, no reply as recorded was filed by the said Unit in response of the same; and

WHEREAS, in view of the above and in exercise of the powers delegated to the Chairman, Central Pollution Control Board under section 5 of the Environment (Protection) Act, 1986, the Unit was directed vide letter no. B-400(S)IPC-III/2015 -16/529 dated 22.03.2016 to close down the sugar mill and not to resume manufacturing operation till installation and commissioning of continuous online monitoring system and providing connectivity of data with SPCB and CPCB server, and to submit compliance to CPCB within 15 days on the receipt of the Closure Direction; and

WHEREAS, the Unit has responded to the above said Closure Direction along with all the required documents vide email dated 31.05.2022 & 02.06.2022 and informed to have complied with the directions regarding installation and commissioning of online continuous effluent monitoring system (OCEMS) and the same was verified by IT Division of CPCB on 21.06.2022; and

WHEREAS, after verification of compliance submitted by the Unit and subsequent verification of the connectivity status of OCEMS by IT Division of CPCB, closure direction of the Unit has been revoked vide direction dated 07.09.2022 and the Unit has been allowed to resume its manufacturing operations; and

WHEREAS, it has been observed that the Unit has not closed its manufacturing operations in the crushing season 2016-17 to 2021-22 which is non-compliance of the closure direction issued by CPCB vide letter no No. B-400(S) PCI-III/2015-16/529 dated 22.03.2016 under section 5 of E (P) Act, 1986 and a separate clause has been mentioned in revocation direction that action for which shall be initiated separately; and

WHEREAS, it has been noticed that the Unit has operated for 166 days during crushing season 2017-18, 158 days during crushing season 2018-19 and 100 days during crushing season 2019-20 as per submitted RT-8(c) form, without installing and connecting OCEMS devices with CPCB server; and

WHEREAS, *The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. Directed Central Pollution Control Board (CPCB) that "The CPCB may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment."* ; and

or

WHEREAS, in compliance of above quoted Hon'ble NGT order, a Committee was constituted by CPCB for reviewing the cases of Environmental Compensation. As per the Committee recommendations one of the cases to be considered for levying environmental compensation is 'not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.'; and

WHEREAS, as per formula derived for levying environmental compensation by CPCB, the total environmental compensation amount was calculated to be Rs. 1,27,20,000/- (Rupees One crore twenty-seven Lacs and twenty thousand rupees only) for the total non-compliance period of 424 days during crushing season 2017-18, Crushing season 2018-19, and crushing season 2019-20; and

NOW, THEREFORE, in view of the above observations and in exercise of the powers delegated to the Chairman, CPCB under section 5 of the Environment (Protection) Act, 1986, **notice is served herewith to show cause why environmental compensation of Rs. 1,27,20,000/- (Rupees One crore twenty-seven Lacs and twenty thousand only) should not be imposed** on M/s Samrudhi Sugars Ltd, G. NO-122,123 and 173, Devi Dahegaon, Tal.-Ghansawangi Dist -Jalna, Maharashtra - 431209 for 424 days of violation based on available record i.e. for running their manufacturing operation during crushing season 2017-18, 2018-19, and 2019-20 without installation and connectivity of OCEMS devices with CPCB server and notwithstanding CPCBs closure direction dated 22.03.2016.

You are hereby given an opportunity to file your objections (if any) to the above direction within 15 days from the receipt of this notice, failing which it will be presumed that you have nothing to say and appropriate action, in accordance with the provisions of the Environment (Protection) Act, 1986, will be taken against the Unit without giving any further notice.

13/8/2
(TANMAY KUMAR) o/c
CHAIRMAN

Copy to:

1. **The Member Secretary,** : For information please.
Maharashtra Pollution Control Board
2nd, 3rd & 4th Floor,
Opp. Cine Planet, Near Sion Circle,
Sion (E), Mumbai- 400022
2. **The Regional Director,** : For information please.
Regional Directorate
Central Pollution Control Board,
ROW House No. 1, Sanjivani Nisarg
Balewadi Pune - 411045

o/c

o/c

3. **The Director (CP Division)** : For information please.
MoEF&CC
Prithvi Block, Indira Paryavaran
Bhawan, Jorbagh Road,
New Delhi – 110 003
4. **The District Magistrate,** : For information please.
Collectorate Office,
District. Jalna, Maharashtra-431203
5. **The Divisional Head, IT, CPCB** : For uploading the direction
on CPCB website.
6. **The Div. Head, IPC-VI, CPCB** : For information please

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
निर्गत
दिनांक 14/02/2023


(PRASHANT GARGAVA) OTC
MEMBER SECRETARY

OTC

OV



BY SPEED POST

CP-11/99/2022-IPC-III-HO-CPCB-HO

January 4, 2024

To,

M/s Samrudhi Sugars Ltd.
G. NO-122,123 and 173,
Devi Dahegaon, Tal. -
Ghansawangi Dist -Jalna,
Maharashtra - 431209

Directions under Section 5 of the Environment (Protection) Act, 1986

WHEREAS, Sugar industries are identified as one of the 17 categories of highly polluting industries which have been discharging environmental pollutants directly or indirectly into the ambient air and water, having potential threat to cause adverse effect on the water and air quality; and

WHEREAS, for strengthening the monitoring and compliance through self-regulation and self-promotion within the industries, a direction under section 18 (1) (b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 was issued on February 05, 2014 to all the State Pollution Control Boards (SPCBs)/ Pollution Control Committees (PCCs) for installation of online effluent/emission monitoring system in 17 categories of industries including Sugar; and

WHEREAS, considering the requests/ representations received from industries/ industrial associations/ SPCBs / PCCs, an extension of time up to June 30, 2015 for installation of online monitoring systems was granted vide direction dated March 02, 2015 under section 18 (1) (b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981; and

WHEREAS, in follow up to the directions issued to the SPCBs/PCCs, CPCB had issued show cause notices under section 5 of the Environment (Protection) Act, 1986 dated 24.07.2015 to 602 Sugar industries, including M/s Samrudhi Sugars Ltd, G. NO-122,123 and 173, Devi Dahegaon, Tal.-Ghansawangi Dist-Jalna, Maharashtra (hereinafter referred to as 'the Unit'), as to why the Unit should not be closed down if the Unit has not complied fully with the direction issued w.r.t. installation of online emission & effluent monitoring system by June 30, 2015. It was further directed to submit documentary evidence regarding status of installation and connectivity of online emission & effluent monitoring system; and

WHEREAS, no reply as recorded was filed by the said Unit in response of the same; and

WHEREAS, in view of the above and in exercise of the powers delegated to the Chairman, Central Pollution Control Board under section 5 of the Environment (Protection) Act, 1986, the Unit was directed vide letter no. B-400(S)IPC-III/2015 -16/529 dated 22.03.2016 to close down the sugar mill and not to resume manufacturing operation till installation and

'परिवेश भवन' पर्वी अर्जुन नगर, दिल्ली-110032

Parivesh Bhawan, East Arjun Nagar, Delhi-110032

दूरभाष/Tel : 43102030, 22305792, वेबसाइट/Website : www.cpcb.nic.in

19/1

commissioning of continuous online monitoring system and providing connectivity of data with SPCB and CPCB server, and to submit compliance to CPCB within 15 days on the receipt of the Closure Direction; and

WHEREAS, the Unit has responded to the above said Closure Direction along with required documents vide email dated 31.05.2022 & 02.06.2022 and informed to have complied with the directions regarding installation and commissioning of online continuous effluent monitoring system (OCEMS) and the same was verified by IT Division of CPCB on 21.06.2022; and

WHEREAS, after verification of compliance submitted by the Unit and subsequent verification of the connectivity status of OCEMS by IT Division of CPCB, closure direction of the Unit has been revoked vide direction dated 07.09.2022 and the unit has been allowed to resume its manufacturing operations; and

WHEREAS, it has been observed that the Unit has not closed its manufacturing operations during the crushing season 2016-17 to 2021-22 which is non-compliance of the closure direction issued by CPCB vide letter no No. B-400(S) PCI-III/2015-16/529 dated 22.03.2016 under section 5 of E (P) Act, 1986 and a separate clause has been mentioned in revocation direction that action for which shall be initiated separately; and

WHEREAS, The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. Directed Central Pollution Control Board (CPCB) that "The CPCB may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment; and

WHEREAS, in compliance of above quoted Hon'ble NGT order, a Committee was constituted by CPCB for reviewing the cases of Environmental Compensation. As per the Committee recommendations one of the cases to be considered for levying environmental compensation is 'not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.'; and

WHEREAS, it is evident that the Unit started the manufacturing operations without seeking permission from CPCB; and

WHEREAS, as per the formula derived for EC by CPCB, the total EC amount calculated for the non-compliance period. Number of days of violation (non-compliance period) for imposing EC is calculated based on actual number of days of operation during crushing seasons till date of compliance of direction i.e. closing of manufacturing operation; and

WHEREAS, it has been noticed that the Unit operated for 166 days during crushing season 2017-18, 158 days during crushing season 2018-19 and 100 days during crushing season 2019-20 as per submitted RT-8(c) form, without installing and connecting OCEMS devices with CPCB server; and

WHEREAS, as per formula derived for levying environmental compensation by CPCB, the total environmental compensation amount was calculated to be Rs.1,27,20,000/- (One crore twenty-seven Lacs and twenty thousand rupees only) for the total non-compliance period of 424 days during crushing season 2017-18, Crushing season 2018-19 & crushing season 2019-20; and

WHEREAS, CPCB issued a show cause notice (SCN) dated 14.02.2023 to the unit under section 5 of the Environment (Protection) Act, 1986 to show cause why the environmental compensation (EC) of Rs.1,27,20,000/- should not be imposed on M/s Samrudhi Sugars Ltd., Tal-Ghansawangi, Dist-Jalna, Maharashtra for 424 days of violation based on available record i.e. running their manufacturing operation during crushing season 2017-18, 2018-19, and 2019-20 without installation and connectivity of OCEMS devices with CPCB server and notwithstanding CPCBs closure direction dated 22.03.2016; and

WHEREAS, the Unit vide its letter dated 24.03.2023 has submitted its reply against the show cause notice dated 14.02.2023 and submitted that they have suffered huge financial loss during the FY 2015-16 & Unit was closed during FY 2016-17 due to financial loss / NPA of loan accounts and legal recovery by Bank and placed purchase order of OCEMS in 2017-18 and installed the same on 12.02.2020; and

WHEREAS, an opportunity of personal hearing was also accorded to the Unit before the Member Secretary, CPCB on 11.07.2023. The Unit did not provide the justification of starting manufacturing operations without seeking revoke direction from CPCB and it was also observed during the hearing that the Unit has operated without valid consent order from MPCB. During the personal hearing, it was decided that in case the Unit has any claim differing to the no. of days EC assessed by CPCB, the Unit may provide documentary evidence of operating days between 22.03.2016 to 12.02.2020; and

WHEREAS, the Unit replied vide letter dated 25.10.2023 and 08.11.2023 and requested for providing personal hearing again. The Unit did not provided any claim /documentary evidence differing the no. of days of EC assessed by CPCB as decided in the personal hearing; and

WHEREAS, the Ministry of Environment, Forest, & Climate Change, Govt. of India, vide notification S.O.157(E) of 27.02.1996 has delegated powers vested under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986) to the Chairman, Central Pollution Control Board (CPCB), to issue direction to any industry, Municipal Corporation, Municipal Council, Cantonment Board, to any local or other Authority for the violation of emission & effluent standards notified under the Environment (Protection) Rules,1986 and other standards and norms; and

NOW therefore, in exercise of powers vested to Chairman CPCB under Section 5 of the Environment (Protection) Act, 1986, **the Unit** [M/s Samrudhi Sugars Ltd, G.NO-122,123 and 173, Devi Dahegaon, Tal.-Ghansawangi Dist-Jalna, Maharashtra] **is hereby directed to deposit Environmental Compensation of Rs 1,27,20,000/-** (Rupees One-crore twenty-seven Lacs and twenty thousand only) in CPCB account No. 532702050000164 (Bank name: Union Bank of India, I.P. Extn Branch, Vikas Marg Extn., Delhi; IFSC UBIN0553271) within 15 days from receipt of this direction. It is also to be noted that, in pursuance of Hon'ble NGT,

Dir. u/s 5 of E (P) Act, 1986 to M/s Samrudhi Sugars Ltd, Maharashtra

O/C 

Principal Bench, New Delhi order dated December 6, 2018 in O.A No. 125/2017, it was decided to levy annual interest @12 % for delay period in deposition of EC.

In case of failure of the Unit to comply with the above directions action as deemed appropriate will be taken with the provisions under Environment (Protection) Act, 1986 without further notice.

M. K. C.
5/1/24
(TANMAY KUMAR)
CHAIRMAN

Copy to:

1. **The Member Secretary,** : For information and necessary action
Maharashtra Pollution Control Board, please.
2nd, 3rd & 4th Floor, Opp. Cine Planet,
Near Sion Circle, Sion (E), Mumbai-
400022
2. **The Regional Director,** : For information and necessary action
Regional Directorate, please.
Central Pollution Control Board,
Survey No. 110, Dhankude Multi
Purpose Hall, Baner Road, Baner,
Pune - 411045
3. **The Director (CP Division),** : For information please.
Ministry of Environment, Forest and
Climate Change (MoEF&CC),
Prithvi Block, Indira Paryavaran
Bhawan,
Jorbagh Road, New Delhi - 110 003
4. **The District Magistrate,** : For information please.
Collectorate Office,
District. Jalna, Maharashtra-431203
5. **The Divisional Head, IT, CPCB** : For uploading the direction on CPCB
website.

B. K. S.
(BHARAT KUMAR SHARMA)
MEMBER SECRETARY

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Appeal No. 33/2020 (WZ)

IN THE MATTER OF:

- 1. Sadashivrao Mandlik Kagal Taluka
Sahakari Sakhar Karkhana Ltd.**
Sadashivnagar, Hamidwada-kaulage,
Taluka-Kagal, Dist. Kolhapur,
Maharashtra-416235

.....Appellant(s)

Versus

- 1. The Chairman**
Central Pollution Control Board
Parivesh Bhavan, East Arjun Nagar,
Shahdara, Delhi-110032.
- 2. The Member Secretary**
Maharashtra Pollution Control Board
2nd, 3rd & 4th Floor, Opp. Cine Planet
Near Sion Circle, Sion East, Mumbai — 400022.
- 3. The Regional Director (West)**
Central Pollution Control Board
Parivesh Bhavan, Opp. VMC Ward Office No. 10
Subhanpura Vadodara - 390023 (Gujarat).
- 4. The District Magistrate**
Collectorate Office,
Dist. Kolhapur
Maharashtra — 414001.
- 5. The In-Charge (CP Division)**
Ministry of Environment Forests and Climate Change
Prithvi Block, Indira Paryavaran Bhavan
Jorbagh Road, New Delhi — 110003

.....Respondent(s)

Counsel for Appellant(s):

Mr. Amarjeet Kumar, Advocate

Counsel for Respondent(s):

Mr. Aniruddha Kulkarni, Advocate for R-1(CPCB)

Mr. Vilas Jadhav, Advocate for R-2 MPCB
Mr. D. M. Gupte, Advocate for MoEF &CC(R-5)

PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)
Hon'ble Dr. Vijay Kulkarni (Expert Member)

Judgment Reserved on: 18.07.2022
Pronounced on: 03.08.2022

JUDGMENT

1. The present Appeal has been filed by the Appellant under Section 18(1) read with Section 16 of the National Green Tribunal Act, 2010 against the order dated 20.12.2019 passed by Respondent No.1 whereby Appellant was directed to deposit Rs. 6,00,000/- (Rupees Six Lakhs Only) as Environmental Compensation in the account of the Central Pollution Control Board (CPCB)/Respondent No.1.
2. In brief the facts are that the Appellant which is a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 has members who are farmers who grow and supply sugarcane to the Appellant.
3. The Appellant had obtained Consent to Operate (CTO) from Respondent No.2/Maharashtra Pollution Control Board (MPCB) which was renewed from time to time, for manufacturing the products,- like Sugar, Bagasse, Press Mud etc.
4. On 24.07.2015, Respondent No.1 issued show cause notice to the Appellant on account of non-installation of Online Continuous Effluent Monitoring System (in short 'OCEMS').
5. By directions dated 22.08.2016, the Respondent No. 1 directed the Appellant not to resume their manufacturing operations till installation and commissioning of OCEMS and transmission of data to SPCB/PCC and CPCB.

6. The Appellant duly got the OCEMS system installed in Appellant's Unit and connectivity with the CPCB servers was established at least, by 28.10.2016 (well before resuming the operations of the Appellant's unit). Upon realizing that OCEMS was successfully installed and commissioned by the start of the crushing season, the Appellant took necessary steps towards resuming its operations (crushing), including procurement of sugar cane for the crushing season 2016-2017.

7. To the utter dismay of the Appellant, the internet services of the BSNL got disputed, at least, as on 05.11.2016, on account of which data from the OCEMS could not be transferred, meaning thereby connectivity of the OCEMS could not be established with the CPCB servers by the Appellant's Unit. Despite its best efforts towards re-establishing of internet services, the internet services could not be resumed which is evident from a letter from BSNL.

8. The Appellant's Unit was forced to initiate its crushing operations on 08.11.2016, as necessary steps by it had already been taken. The internet service by BSNL was resumed on 25.11.2016, immediately, thereafter, the Appellant's Unit took all necessary steps to establish transmission of OCEMS data to the server(s) of Respondent No. 1. The IT team of the Respondent No. 1 verified successful transmission of the OCEMS data, at least, on 28.11.2016, as it is evident from the impugned directions/order. In the meantime, the Maharashtra Pollution Control Board/Respondent No. 2 (MPCB), visited the Appellant's Unit on 26.11.2016 (also on 28.12.2016 and 05.01.2017) and the reports issued by them clearly indicated that the Appellant's Unit was not causing any pollution to the environment and that there had been successful installation/commissioning of the OCEMS in the Appellant's Unit as it is evident from a report dated 28.12.2016.

9. Vide letter dated 05.08.2017, Appellant requested Respondent No.1 to revoke the closure directions drawing attention towards the fact that the Appellant had already complied with the directions of Respondent No. 1 with regards to installation and commissioning of OCEMS. Based on the compliance by the Appellant and after successful verification by IT Division of Respondent No.1, earlier closure direction was revoked vide letter dated 14.08.2017. Thereafter, Respondent No.1 issued directions under Section 5 of the Environmental (Protection) Act, 1986 (in short EPA) to the Appellant by notice dated 28.02.2019, directing the Appellant to deposit Rs. 27,90,000/- (Rupees Twenty Seven Lakhs and Ninety Thousand only) as environmental compensation towards non-compliance of the directions of Respondent No. 1 during the period 08.11.2016 to 08.02.2017.

10. The Appellant responded by letter dated 09.04.2019, mentioning correct facts and requested Respondent No.2 to withdraw their order for levy of environmental compensation and also inviting attention of Respondent No.1 with regards to the difficulties and losses being faced by the sugar industry in general, and financial position of the Appellant's Unit due to multiple reasons.

11. The Respondent No.1, after giving personal hearing to the Appellant passed amended order on 20.12.2019 (Impugned herein) directing the Appellant to deposit the sum of Rs. 6,00,000/- as environmental compensation for non-compliance of the directions of Respondent No. 1 during the period 08.11.2016 to 28.11.2016 (20 days).

12. It is further submitted that the impugned order is arbitrary because of non-observance of the fact that the aforesaid closure

notice only directed the Appellant “not to resume its operations till installation and commissioning of OCEMS and transmission of data with Respondent Nos. 1 and 2” because the Appellant had already installed and commissioned the online monitoring system (OCEMS) in their factory’s Unit well before the resumption of its operation and these facts were duly conveyed to the Respondent No. 1 from time to time. The Respondent No. 1 ought to have revoked their closure directions without waiting for any further response from the Appellant. The withdrawal process in-fact, has, been unduly delayed by the Respondent No. 1 to the detriment of the Appellant.

13. In view of the compliance by the Appellant regarding installation and commissioning of online monitoring system (OCEMS) in the year 2016 itself, there was no occasion or reason for the Respondent No. 1 to issue closure order dated 22.08.2016. The closure order never directed the Appellant to close down their unit.

14. Further, it is submitted that levy of penalty in form of the environmental compensation is based on the Principle of “Polluter Pays”, which makes it crystal clear-that the actual pollution to the environment is *sine qua non* for imposition of environmental compensation and in the present case there is no evidence led from the side of the Respondent showing any actual pollution caused to the environment by the Unit of the Appellant. The Respondent No.1 failed to take into consideration the factors between 08.11.2016 to 28.11.2016, were not in control of the Appellant that led to the alleged contravention of the directions, as it was the internet services glitch which happened on the part of the BSNL. According to the closure notice dated 22.08.2016 direction was “not to resume its operations till installation and commissioning of online monitoring system and networking of data with Respondent No. 1 and 2” and it remains undisputed that the Appellant had already installed and

commissioned the online monitoring system and networking of data with Respondent No. 1 and 2. Hence, the impugned order be set-aside.

15. In rebuttal, the Respondent Nos. 1 and 3 have stated that IT division of CPCB verified the establishment of initial uninterrupted data connectivity of OCEMS for all the specified parameters from the Appellant's Unit on 28.11.2016 and not on 28.10.2016 as claimed by the Appellant. CPCB has not received any correspondence from the Appellant's Unit regarding interrupted data services from BSNL, hence, reported excuse cannot be considered. The Appellant's Unit should have applied for revocation of closure directions before start of crushing season and not after the end of crushing season.

16. However, after the receipt of the revocation request from the Appellant's Unit vide its letter dated 05.08.2017 and required verification of OCEMS connectivity by IT division, the Answering Respondent issued revocation direction vide letter dated 14.08.2017. It is observed that the Unit had closed its manufacturing operations on 08.02.2017, only after operating it during crushing season 2016-17, which is non-compliance of the closure direction dated 22.08.2016.

17. It is further submitted that EC amount was calculated for a period of 93 days operation against CPCB closure direction during the crushing season 2016-17 as per approved formula. However, at the request of the Appellant's Unit, an opportunity of personal hearing was accorded to him and it was found that the Appellant's Unit had connected the OCEMS to CPCB in mid of crushing season 2016-17. Therefore, the amount only for the period of non-connectivity of OCEMS with CPCB server was reconsidered. IT division had verified that the date of first connectivity of OCEMS data with CPCB server

was 28.11.2016 but the Unit had resumed its manufacturing operations from 08.11.2016, so the EC amount was calculated for the period 08.11.2016 to 28.11.2016 (for 20 days) and the amount of EC was reduced to Rs 6,00,000/-.

18. We have heard the arguments of Learned Counsels for both the parties at length.

19. The Learned Counsel for the Appellant has drawn attention to the notice of Chairman, CPCB issued under Section 5 of the Environment (Protection) Act, 1986 annexed as annexure-III to the reply affidavit and has drawn attention to the last but one paragraph which is quoted herein below:-

“Now, therefore, in view of the above and in exercise of the powers delegated to the Chairman, Central Pollution Control Board under section 5 of the Environment (Protection) Act, 1986, the unit is hereby directed not to resume its manufacturing operations till installation and commissioning of online 24 x 7 monitoring system and data to SPCBs/PCCs and CPCB.”

20. Having pointed it out, it was vehemently argued that nowhere it indicates that the Appellant could not resume the operations without seeking revocation of the said notice because it had permitted resumption of manufacturing operations as soon as the installation and commissioning of online 24x7 monitoring system and data to SPCB/PCC and CPCB was established and in the case in hand, it is apparent that the OCEM system had been installed and therefore, he has not committed any error in resumption of the manufacturing operations.

21. He has drawn attention to the document at page no.31 of the paper book which is annexed as annexure A-2 to the Appeal which is an email in respect of the “CPCB connectivity for Sadashivrao Mandlik

SSK Ltd. is completed” and it was argued that this clearly indicates that on 28.10.2016 OCEMS was established in Appellant’s Unit.

22. Next, he has drawn attention to the Annexure No.A-3 annexed to the Appeal memo which is a letter issued by Junior Landline Officer, Murgud, addressed to the Managing Director of the Appellant’s Unit saying that due to repairing of roads work in the Village Hamidwada from 05.11.2016 to 25.11.2016, the local cable of Hamidwada exchange was disconnected, hence, Appellant’s net services were closed for which apology has been tendered and the connection is reconnected on 26.11.2016. Having drawn attention to this, it is argued that there is no fault on the part of the Appellant, if there is no connectivity of the OCEMS system with the server of CPCB because the fault lies with the BSNL for which he cannot be penalized.

23. From the side of the Respondents, it has been vehemently argued that this evasive plea cannot be taken by the Appellant that the data could not be transmitted to the server of the CPCB/Respondent Nos.2 and 3 because of the internet services having been disrupted because it was bounden duty of the Appellant to establish alternative arrangement of internet connection to transmit the required data.

24. It is further argued that simply establishment of OCEMS was not sufficient because it was bounden duty of the Appellant to ensure that the data was transmitted to the Respondent’s servers which the Appellant failed in ensuring and hence the compensation which has been imposed cannot be set-aside.

25. We during argument also made a query from the Appellant as to why the Appellant could not produce before us the data of the period in question i.e. 08.11.2016 to 28.11.2016 of 20 days which he was supposed to transmit to the Respondents, because a copy of the same ought to have been kept safe with the Appellant for situation like the present one as a proof that the said data did exist and the system was functional.

26. Further, it was also queried as to why, after the internet connection was restored, the entire data of the said period was not transmitted to the Respondents and also in the alternative some individual/officials of the Appellant's Unit could have been sent to the office of the Respondents with the said data immediately after the breakdown of the system, informing about the said data.

27. All these queries could not be answered appropriately and convincingly. Therefore, we are of the view that from the perusal of evidence which has come on record that the Appellant does appear to have failed in its duty to transmit data to the Respondents for the aforesaid period of 20 days and we do not find any infirmity in the impugned order whereby compensation is slapped against the Appellant.

28. Accordingly, this Appeal deserves to be dismissed and accordingly dismissed.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 03, 2022.
Appeal No.33/2020 (WZ) JG

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Appeal No.39/2020(WZ)

In the matter of:

SHRI SANT DAMAJI SSK LTD.

A/p Mangalwedha,
Taluk Mangalwedha,
District Solapur
Maharashtra — 413305.

santdamajissk@gmail.com

Appellant(s)

Versus

1. THE MEMBER SECRETARY

Central Pollution Control Board
Parivesh Bhavan, East Arjun Nagar,
Shandara, Delhi-110032.

mscb.cpcb@nic.in

2. THE MEMBER SECRETARY

Maharashtra Pollution Control Board
2nd, 3rd and 4th Floor, Opp. Cine Planet
Near Sion Circle, Sion East,
Mumbai — 400022.

ms@mpcbgov.in

3. THE REGIONAL DIRECTOR (WEST)

Central Pollution Control Board
Parivesh Bhavan, Opp. VMC Ward Office No. 10
Subhanpura Vadodara – 390023.

(Gujarat). brnaidu.cpcb@nic.in

4. THE DISTRICT MAGISTRATE

Collectorate Office, Dist. Solapur
Maharashtra — 414001.

collector.solapur@maharashtra.gov.in

5. THE IN-CHARGE (CP DIVISION)

Ministry of Environment Forests
and Climate Change Prithvi Block,
Prithvi Block, Indira Paryavaran Bhavan
Jorbagh Road, New Delhi — 110003
Hasan-mef@nic.in

Respondent(s)

Counsel For Applicant (s):

Mr. Tarun Khurana, Mr. Tapan
Shah, Mr. Amarjeet Kumar
Advocates

Counsel For Respondent (s)

Mr. Aniruddha Kulkarni,
Advocate for R-1 & 3(CPCB)
Mr. Vilas Jadhav, Advocate for
R- 2 (MPCB)
Mr. D. M. Gupte, Advocate for
R-5 (MoEF&CC)

PRESENT:**CORAM: HON'BLE JUSTICE DINESH KUMAR SINGH, (JUDICIAL MEMBER)****HON'BLE DR. VIJAY KULKARNI, (EXPERT MEMBER)**

Reserved on : 12.08.2022**Pronounced on: 17.08.2022**

ORDER

1. This Appeal has been preferred against the decision/order dated 17-12-2019 passed by the Respondent No.1- the Central Pollution Control Board (CPCB), whereby Respondent No.1 has directed the Appellant to deposit Environmental Compensation of Rs.18,90,000/- in CPCB's account.

The brief facts of the case are that:

2. The Appellant is a Co-operative Society registered under the provisions of Maharashtra Co-operative Societies Act, 1960, and its members are primarily farmers who grow and supply sugarcane to the Appellant. The Appellant was granted permission to operate industrial unit for manufacturing sugar and other products, as detailed in the Consent to Operate (CTO) by the Maharashtra State Pollution Control Board (MSPCB), which was renewed from time to time and which was for manufacturing the products, namely; Sugar, Bagasse, Press Mud, inter-alia, others. Vide letter dated 24-7-2015, Respondent No. 1 issued a Show Cause Notice to the Appellant on account of non-installation of Online Continuous Effluent Monitoring System (OCEMS). By their direction dated 22-03-2016, Respondent No. 1, directed the Appellant not to resume their manufacturing operations till installation and commissioning of Online Continuous Effluent Monitoring System (OCEMS) and data to SPCBs/PCCs and CPCB.

3. Respondent No. 2-MPCB visited the Appellant's unit on 22-11-2016, 07-12-2016 and 22-11-2017, and collected samples and issued Reports indicating that the unit was not causing any pollution to the environment. Vide letter dated 17-09-2017 the Appellant informed Respondent No. 1 that their unit had purchased the Online Monitoring System and its installation was going on and the connectivity would be established within 15

days. Accordingly, the equipment was supplied, installed and information thereof was sent by the Appellant to Respondent Nos. 1 and 2 along with self-certificate and Manufacturing Report for 2016-2017. The Online System was also linked to the servers of Respondent Nos. 1 and 2. The Appellant informed the Respondent No.1 that their unit would start crushing for the year 2017-2018 by second week of November 2017. The Appellant also registered their units' details on the online portal of Respondent No. 1. Respondent No. 1 by their order dated 30-11-2017, allowed the Appellant to resume their manufacturing operations. Thereafter, Respondent No. 1 issued a Notice dated 18-03-2019 under Section 5 of the Environmental (Protection) Act, directing the Appellant to deposit Rs. 25,80,000/ as Environmental Compensation towards non-compliance of the directions of Respondent No. 1 during the period 11-11-2016 to 13-01-2016 and 09-11-2017 to 30-11-2017. The Appellant by their letters dated 07-04-2019 and 15-05-2019 and by their representation through their Counsel on 02-06-2019 pointed out the correct facts to the Respondent No. 1 and requested them to withdraw their order for levy of Environment Compensation, pointing out therein that the Appellant had already installed Online Monitoring System during 2016-2017, but despite their steps, the supply and delivery of the equipment got delayed for reasons not in control of the Appellant. Further, it was informed

that due to delay, the connectivity could not be established during 2016-2017, and even in 2017-2018 the connectivity was not continuous. It was also informed by the Appellant that their factory was located in a remote village and, as such, they were facing issues of connectivity for transmitting the data. However, the said issue was resolved after installation of new Mobile Tower.

4. The Appellant moved the Appeal before the Tribunal on 11-06-2019 praying to stay the order of Respondent No. 1, whereon the Tribunal was pleased to direct Respondent No. 1 on 30-07-2019 to afford an opportunity of hearing to the Appellant. Accordingly, after hearing the Appellant, Respondent No.1 passed an amended order on 17-12-2019 (impugned herein) directing the Appellant to deposit Rs.18,19,000/- as Environmental Compensation towards non-compliance of the directions for the period 11-11-2016 to 13-01-2016. Therefore, in this Appeal the challenge is made on the ground that Respondent No.1 erred by not observing the fact that in the Closure Notice the direction to the Appellant was “not to resume its operations till installation and commissioning of Online Monitoring System and networking of data with Respondent Nos.1 and 2”, because the Appellant had already installed and commissioned Online Monitoring System (OCEMS) in the factory unit before resuming its operations, which facts were duly conveyed to the Respondent No.1 from

time to time. It is further mentioned that the actual pollution caused to the environment has also not been ascertained and yet the 'Polluter Pays Principle' has been invoked by the Respondents.

REPLY-AFFIDAVIT OF RESPONDENT NO.2-MPCB DATED: 2-11-2020

5. From the side of Respondent No.2-MPCB it is submitted that the direction of closure to the Appellant Industry issued vide letter dated.22-03-2016 is due to no connectivity of Online Monitoring System to the Central Pollution Control Board (CPCB) as well as MPCB servers for the period of 63 days i.e. 11-11-2016 to 13-01-2017, hence the direction is issued to deposit Environmental Compensation of Rs.18,90,000/- vide directions dated.17-12-2019.

COUNTER AFFIDAVIT OF RESPONDNET NOS. 1 AND 3-CPCB DATED 25-11-2020

6. It is submitted in the reply affidavit that Show-cause Notice dated 24-07-2015 was issued to the Appellant to show cause as to why the unit should not be closed when the unit has not complied fully with the directions issued with respect to installation of OCEMS services, but no reply was received from the Appellant's unit. Thereafter, the name of non-complying units, including that of the Appellant were published in National

daily newspapers dated 15-12-2015 giving opportunity to the units to file reply within a week, but again no reply was received from the Appellant's unit, Hence, the closure direction dated 22-03-2016 was issued under Section 5 of the Environment (Protection) Act, 1986. It is further stated that even after the CPCB's closure direction the unit of the Appellant operated for total 86 days (i.e. from 11-11-2016 to 13-01-2017 and 09-11-2017 to 30.11.2017). The National Green Tribunal, Principal Bench in the matter of **OA No 593/2017 (WP (Civil) No 375/2012), Paryavaran Suraksha Samiti & Anr. Vs Union of India & Ors.** vide order dated 28-08-2019 directed

'...the Environmental Compensation regime fixed for industrial units, GRAP, Solid Waste, Sewage and Groundwater in the Report dated 30-05-2019 is accepted and same may be acted upon as an interim measure'...'.One of the cases to be considered for levying Environmental Compensation in the said Report is 'non-complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.'

Thus, in compliance with above order of the NGT, the answering Respondent levied Environmental Compensation on the Appellant.

7. Further, it is submitted that the NGT in its order dated 22-05-2019 in Appeal No. 44/2019 directed CPCB to consider the

views of the unit and to give opportunity of personal hearing to the unit. In compliance, the opportunity of personal hearing was given to the Appellant's unit on 01-10-2019 and it was resolved that Environmental Compensation (EC) amount levied may be reviewed considering the date of connectivity as verified by the IT division of CPCB and in accordance with CPCB policy on EC. The IT division further verified the date of establishment of initial uninterrupted data connectivity of OCEMS for all the specified parameters as on 06-10-2017. Therefore, the revised EC amount was calculated as Rs. 18,90,000/- for the non-compliance period of 63 days only (i.e. from 11-11-2016 to 13-01-2017). Accordingly, a fresh direction dated 17-12-2019 was issued to the Appellant's unit under Section 5 of the Environment (Protection) Act, 1986, which is challenged before this Tribunal.

8. On the basis of above pleadings, this Tribunal has to decide as to whether the Environmental Compensation imposed upon the Appellant's unit by Respondents by impugned order is in accordance with the Rules and the same should be upheld or should it be set aside?

9. None has appeared from the side of Appellant to press this Appeal, however, we find from the grounds set up in the Appeal to challenge the impugned order are that the Appellant had already installed OCEM system in its premises and had linked the same to the servers of Respondent Nos. 1 and 2, though with

little delay, because of delivery of equipment got delayed despite best efforts having been made on their part. The circumstances for delay were beyond their control, particularly, in view of the fact that the village where the said unit is located is remote one which faces connectivity problem which resulted in delay in transmission of data as well. Further, it is stated that the actual loss to the environment has not been computed and yet the compensation has been determined which is without any basis. Further, it is stated that in the closure notice it was written that 'not to resume its operations till installation and commissioning of Online Continuous Effluent Monitoring System (OCEMS) and networking of data with Respondent Nos.1 and 2' and accordingly, the Appellant had already installed and commissioned Online Monitoring System in their factory before resuming its operations. Therefore, no violations should be treated to have been committed by the Appellant.

10. In response from the side of Respondents it is vehemently argued that merely installing and commissioning of Online Continuous Effluent Monitoring System (OCEMS) would not be sufficient in this case, because it was the duty of the Appellant to ensure that the data was transmitted to Respondents. In the present case, the Appellant did not ensure transmission of data for the afore-mentioned period which is calculated to be 63 days and calculation of EC is assessed on the basis of ratio laid down

in **Paryavaran Suraksha Samiti & Anr. Vs Union of India & Ors** by the Tribunal. Hence, it cannot be said that any irregularity or illegality has been committed on the part of Respondents in assessing the environmental loss.

11. No argument has come forth from the side of Appellant in this case against the arguments of Respondents mentioned above, as none appeared from their side. Therefore, we do not find any merit in this Appeal and are of the view that it was bounden duty of the Appellant to ensure that the data was transmitted to the Respondents within time limit. Even if the Appellant's unit was based in the remote area some communication should have been made to the Respondents regarding difficulty being faced by them and the said information regarding data could have been passed on to the Respondents by-hand through some messenger. Therefore, the appeal deserves to be dismissed and it is accordingly dismissed. Cost easy.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 17, 2022
Appeal No.39/2020(WZ) hk

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Appeal No. 40/2020 (WZ)

IN THE MATTER OF:

- 1. Bhairavnath Sugar Works Ltd.**
Taluk Karmala, District Solapur
Maharashtra — 413203

.....Appellant(s)

Versus

- 1. The Chairman**
Central Pollution Control Board
Parivesh Bhavan, East Arjun Nagar,
Shahdara, Delhi-110032.
- 2. The Member Secretary**
Maharashtra Pollution Control Board
2nd, 3rd & 4th Floor, Opp. Cine Planet
Near Sion Circle, Sion East, Mumbai — 400022.
- 3. The Regional Director (West)**
Central Pollution Control Board
Parivesh Bhavan, Opp. VMC Ward Office No. 10
Subhanpura Vadodara - 390023 (Gujarat).
- 4. The District Magistrate**
Collectorate Office,
Dist. Kolhapur
Maharashtra — 414001.
- 5. The In-Charge (CP Division)**
Ministry of Environment Forests and Climate Change
Prithvi Block, Indira Paryavaran Bhavan
Jorbagh Road, New Delhi — 110003

.....Respondent(s)

Counsel for Appellant(s):

Mr. Amarjeet Kumar, Advocate

Counsel for Respondent(s):

Mr. Aniruddha Kulkarni, Advocate for R-1(CPCB)
Mr. Vilas Jadhav, Advocate for MPCB
Mr. D. M. Gupte, Advocate for MoEF & CC(R-5)

PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)
Hon'ble Dr. Vijay Kulkarni (Expert Member)

Judgment Reserved on: 18.07.2022
Pronounced on: 03.08.2022

JUDGMENT

1. The present Appeal has been filed by the Appellant under Section 18(1) read with Section 16 of the National Green Tribunal Act, 2010 against the order dated 18.12.2019 passed by the Respondent No.1/Central Pollution Control Board (CPCB), directing the Appellant to deposit a sum of Rs. 8,70,000/- (Rupees Eight Lakhs and Seventy Thousand only) by way of Environmental Compensation.

2. The facts in brief are as follows:-

- (i) The Appellant is a company incorporated under the provisions of the Companies Act, 1956. The members of the Appellant's company are primarily farmers who grow and supply sugarcane to the Appellant.
- (ii) The Appellant applied and was granted permission to operate an industrial unit for manufacturing sugar and other products, details of which are given in the Consent to Operate (CTO) granted by the Maharashtra State Pollution Control Board (MSPCB). The said consent was renewed from time to time.
- (iii) On 22.08.2016, the Respondent No.1, directed the Appellant not to resume their manufacturing operations till installation and commissioning of online 24x7 monitoring system and networking of data to SPCB/PCC and CPCB.

- (iv) The Online Continuous Effluent Monitoring System (in short 'OCEMS') was duly installed in the factory unit of the Appellant before starting the crushing operation on 07.11.2019 (there seems type mistake by Appellant it should be 2016). The successful installation of the OCEMS was duly acknowledged by the CPCB, at least, on 26.11.2016.
- (v) The Appellant by way of abundant precaution informed the Respondent No. 1 vide letter dated 05.12.2016 regarding installation and commissioning of OCEMS in their factory unit, pursuant to which, the MPCB, SRO Solapur visited the Appellant's unit on 15.12.2016 and submitted the report to the effect that the system was successfully installed and commissioned.
- (vi) The Appellant vide their letter dated 09.08.2017 requested the Respondent No. 1 to revoke the closure directions drawing their attention to the fact that the Appellant had already complied with the directions of Respondent No. 1 regarding installation and commissioning of OCEMS. The Respondent No. 1, based on the compliance made by the Appellant and after successful verification by IT Division thereof, allowed the Appellant to resume its manufacturing, revoking its earlier closure directions.
- (vii) Thereafter, the Respondent No.1 issued directions under Section 5 of the Environment (Protection) Act, 1986 (in short EPA) to the Appellant vide notice dated 05.02.2019 directing to deposit Rs. 14,40,000/- (Rupees Fourteen Lakhs and Forty Thousand only) as environmental compensation towards non-compliance of the directions of Respondent No. 1 during the period 07.11.2016 to 24.12.2016.

- (viii) Thereafter, a representation was made through Counsel by the Appellant requesting for withdrawal of the levy amount, specifically pointing out therein that the Appellant had already complied with the directions regarding installation of OCEM system.
- (ix) The Appellant moved an Appeal before this Tribunal on 14.05.2019 against the imposition of environmental compensation to the tune of Rs, 14,40,000/- on 05.02.2019, whereon, the Tribunal passed order dated 22.05.2019 directing the Respondent No. 1 to provide opportunity of hearing to the Appellant.
- (x) In accordance with the said order, vide letter dated 29.05.2019, the Appellant submitted their view point before Respondent No.1 requesting to revoke the earlier directions towards imposition of environmental compensation and, thereafter, after providing opportunity of hearing, the Respondent No.1 amended earlier order on 18.12.2019, directing the Appellant to deposit a sum of Rs. 8,70,000/- as environmental compensation towards non-compliance of the directions of Respondent No.1 during the period 07.11.2016 to 05.12.2016. It is this order which is under challenge before this Tribunal in the present Appeal on the basis of the grounds set up in paragraph no. 17 of the memo of Appeal.
- (xi) The main ground to challenge the impugned order is that the same has been passed on the premise that the Appellant operated the unit in contravention of the closure notice that the same is erroneous because of the non-observance of the fact by the Respondent No.1 that the said closure notice only directed the Appellant “not to resume its operations till installation and

commissioning of online monitoring system and networking of data with Respondent Nos. 1 and 2”.

- (xii) In the case in hand that the Appellant had already installed and commissioned the online monitoring system (OCEMS) in their factory unit before resuming its operations and these facts were duly conveyed to Respondent No.1 from time to time.
- (xiii) Further, the ground being set up that it is settled position of law that levy of penalty in the form of environmental compensation is based on Principle of ‘Polluter Pays’, which makes it crystal clear-that the actual pollution to the environment is *sine qua non* for imposition of environmental compensation. It is evident that there is no evidence led from the side of the Respondent showing that Appellant had caused actual pollution to the environment in any manner whatsoever.
- (xiv) The OCEMS itself was installed in the year 2016 and the Appellant had diligently provided requisite details of installation and commissioning of the OCEMS.

3. The Respondent No.2 (MPCB) has filed written reply but has not stated anything therein in respect of as to why the order dated 18.12.2019 passed by the Respondent No.1 be not set-aside. It narrates only a detail regarding inspection made of the premises of the Appellant in compliance with the order of this Tribunal dated 30.09.2020. We do not need it appropriate to give details of the said inspection report which have been quoted in the said affidavit.

4. The Respondent Nos.1 and 3 have filed written reply wherein it has been stated in rebuttal by them that it was clearly mentioned in the closure directions dated 22.08.2016 that installation and commissioning of online 24x7 monitoring system and data transfer to State Pollution Control Board and Central Pollution Control Board

servers is compulsory. The acknowledgment receipt dated 26.11.2016 referred by the unit is showing installation and connection of OCEMS to CPCB servers and it does not ensure 24x7 data transfer to CPCB servers. The establishment of continuous uninterrupted data connectivity of OCEMS for all the specified parameters from the Appellant's Unit was received at CPCB servers on 05.12.2016 as verified by the IT division of CPCB. Hence, the EC for the period of manufacturing operations before the connectivity of OCEMS with CPCB servers (i.e. from 07.11.2016 to 05.12.2016) is justified.

5. Further from the side of Respondent Nos. 1 and 3, it is submitted that upon reported compliance and submission of required documents including self-certificate, online registration details, online connectivity details, valid Consent copy vide letter dated 09.08.2017 and subsequent verification by the IT division, CPCB issued revocation order to the unit on 07.09.2017 but simultaneously, the CPCB also informed the Appellant through revocation direction that a separate action shall be initiated as per law for non-compliance of the CPCB's closure direction dated 22.08.2016 by the industry/Appellant wherein they continued the manufacturing operation without seeking revoking of closure directions issued to it.

6. The CPCB in its direction dated 05.12.2019 to the Appellant regarding levying of EC mentioned that in compliance of the NGT's order passed in O.A. No. 593/2017 (WP) (CIVIL) No. 375/2012, *Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.*, a Committee was constituted by CPCB for preparing report on methodology for assessing penalty & EC. As per the Committee recommendations, one of the cases to be considered for levying environmental compensation is 'not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.' The

report of committee was submitted before NGT on 'Methodology for assessing penalty & EC and action plan to utilize the fund' and the same was accepted by the NGT vide its order dated 28.08.2019. EC amount was calculated based on guidelines & formula mentioned in the said report. The NGT passed order on 22.05.2019 in Appeal No. 44/2019 directing the CPCB to consider the views of the units and to give opportunity of personal hearing to the unit. In compliance of that, an opportunity of personal hearing was given to the Appellant' Unit on 18.09.2019. After hearing and considering the viewpoints of the unit's representative, it was resolved that EC amount levied may be reviewed considering date of connectivity as verified by IT division of CPCB and in accordance with the CPCB policy on EC. Accordingly, the revised EC amount was calculated to be Rs 8,70,000/- for the non-compliance period of 29 days only (i.e. from 07.11.2016 to 05.12.2016) and a fresh direction was issued on 18.12.2019 which is impugned herein.

7. Therefore, it is submitted that there is no infirmity in the impugned order and it should be upheld and the Appeal should be dismissed.

8. We have heard the arguments of Learned Counsels for both the parties at length.

9. The Learned Counsel for the Appellant has drawn attention to the notice of Chairman, CPCB issued under Section 5 of the Environment (Protection) Act, 1986 annexed as annexure-II to the reply affidavit dated 22.08.2016 and has drawn attention to the last but one paragraph which is quoted herein below:-

“Now, therefore, in view of the above and in exercise of the powers delegated to the Chairman, Central Pollution Control Board under section 5 of the Environment (Protection) Act, 1986, the unit is hereby directed not to resume its manufacturing operations

till installation and commissioning of online 24 x 7 monitoring system and data to SPCBs/PCCs and CPCB.”

10. Having pointed out in the above text, it was vehemently argued that nowhere it indicates that the Appellant could not resume the operations without seeking revocation of the said notice because it had permitted resumption of manufacturing operations as soon as the installation and commissioning of online 24x7 monitoring system and data to SPCB/PCC and CPCB was established and in the case in hand, it is apparent that the OCEM system had been installed and, therefore, the Appellant has not committed any error in resumption of the manufacturing operations.

11. From the side of the Respondents, it has been vehemently argued that simply establishment of OCEMS was not sufficient because it was bounden duty of the Appellant to ensure that the data was transmitted to the Respondent's servers, in which the Appellant failed miserably and hence the compensation which has been imposed cannot be set-aside.

12. We, during argument also made a query from the Appellant as to why the Appellant could not produce before us the data of the period in question i.e. 07.11.2016 to 05.12.2016 of 29 days, which he was supposed to transmit to the Respondents, because a copy of the same ought to have been kept safe with the Appellant for situation like the present one as a proof of the fact that the data did exist and the system was functional during the said period.

13. Further, it was also queried as to why, Appellant has not stated anything about it, the entire data of the said period was not sent

through individual/officials of the Appellant's Unit to the office of the Respondents with the said data.

14. All these queries could not be answered appropriately and convincingly. Therefore, we are of the view that from the perusal of evidence which has come on record, the Appellant does appear to have failed in his duty to transmit data to the Respondents for the aforesaid period of 29 days and we do not find any infirmity in the impugned order whereby compensation is slapped against the Appellant.

15. Accordingly, this Appeal deserves to be dismissed and accordingly dismissed.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 03, 2022.
Appeal No. 40/2020 (WZ)
JG