

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE AT PUNE

APPEAL NO. 9 OF 2024 (WZ)

M/s. Lavino-Kapur Cottons Private Limited

.... Appellant

Versus

Maharashtra Pollution Control Boards and Others

....Respondents

WRITTEN ARGUMENTS OF RESPONDENT NO. 2

May it please this Hon'ble Tribunal

1. This Hon'ble Tribunal while deciding IA No. 66 of 2024 (application for condonation of delay) filed by the Appellant in the present appeal has condoned the delay only with respect to the delay caused in challenging Order dt 23.10.2020 passed by MPCB (R1) as covered in Prayer (a) and not in respect of inordinate delay caused in allegedly challenging various issues/ grievances in respect of which various reliefs in Prayer (b) (i) to (viii) are sought. Thus in its humble submission Respondent No.2 states that the to the extent of Prayer (b) appeal does not survive and Appellant is not entitled to pursue Prayer (b).

2. Respondent states that even though delay is condoned for limited purpose of Prayer (a) wherein Appellant seeks to quash and set aside the MPCB's demand against the Appellant for an amount of INR 77.513 Lakhs pursuant to the impugned notice dated 23.10.2020 (*Annexure 1 at Pg. 64 of Appeal compilation*) issued by R1; this Respondent states the alleged Prayer is **not maintainable** and rather has become **infructuous** for the following reasons: -

(a) Appeal not maintainable

- (i) the demand pursuant to the impugned notice was raised by MPCB pursuant to the Report of the Expert Committee constituted by this Hon'ble Tribunal in OA/64-2016 (WZ), which Report was adopted by this Hon'ble Tribunal vide its order dt 17.09.2020
(attention is drawn to Paragraph 10 and 11 of the said order produced at Pg 19-45 of the compilation of documents filed by this Respondent in connected OA/21-2024 pending before this Hon'ble Tribunal, which compilation is adopted for consideration of the present appeal as per daily order dt. 08.02.2024 passed in the present matter).
- (ii) Any challenge to the alleged impugned notice would be a challenge to the directions of this Hon'ble Tribunal, which can be filed by way of an appeal before the Hon'ble Supreme Court of India.
- (iii) For the reason above, present appeal / prayer (a) is not maintainable.

(b) Appeal is infructuous

(i) The said order dated 17.09.2020 including demand notices raised by MPCB (R1) to various member units including the CETP unit run by TEPS (i.e. R2 herein) were challenged before the Hon'ble Supreme Court of India under Civil Appeal (CA) No. 3756 of 2020 (filed by Tarapur Industrial Manufacturer's Association – TIMA) and CA No. 3638 of 2020 (filed by Tarapur Environment Protection Society – TEPS i.e. R2 herein)

(ii) The Hon'ble Supreme Court taking cognizance of various grievances raised by the TIMA and TEPS, was pleased to issue directions vide its common order dated 14.12.2020 passed in the said appeals.

(attention is drawn to directions contained in the said order produced at Pg 46-50 of the compilation of documents filed by this Respondent in connected OA/21-2024 pending before this Hon'ble Tribunal, which compilation is adopted for consideration of the present appeal as per daily order dt. 08.02.2024 passed in the present matter).

(iii) This Respondent complied with the said directions of the Hon'ble Apex Court and deposited 30% of the compensation amount, for which reason challenge to the said Expert Committee Report was heard by this Hon'ble Tribunal.

- (iv) This Hon'ble Tribunal (at the relevant time, functioning through Principal Bench) after considering various objections raised by TIMA and TEPS and other identified individual units to the Expert Committee's Reports, passed a final judgment and order dated 24.01.2022 in the said OA/64-2016 (WZ).

(said judgment and order is produced at Pg Nos 85 to 636 of the compilation of documents filed by this Respondent in connected OA/21-2024 pending before this Hon'ble Tribunal, which compilation is adopted for consideration of the present appeal as per daily order dt. 08.02.2024 passed in the present matter).

- (v) It may please be noted that the penalty i.e. amount of compensation against the Appellant herein was enhanced to INR 98.397 Lacs due to revised distribution factor adopted by the Expert Committee in its subsequent revised report basis which this Hon'ble Tribunal delivered a final judgment and order dt 24.01.2022 passed in OA/64-2016 (WZ) against the earlier compensation amount of INR 77.513 Lacs levied against the Appellant in earlier order dt. 17.09.2020. The earlier demand is allegedly challenged under the present appeal and not the revised/enhanced demand.

(attention is drawn to Sr. No. 102 of the table at Pg 257 of the compilation of documents filed by this Respondent in connected OA/21-2024 pending before this Hon'ble Tribunal, which compilation is adopted for consideration of the present appeal as per daily order dt. 08.02.2024 passed in the present matter).

- (vi) As a matter of fact, the said judgment and order has been independently challenged by TIMA and TEPS before the Hon'ble Supreme Court of India, which includes challenge to the revised compensation amount levied against TEPS.
- (vii) For reasons afore stated, the impugned notice dated 23.10.2020 or any direction passed thereunder by MPCB (i.e. R1) does not survive, as first of all such demand was kept in abeyance as per direction no. (h) of order dt 14.12.2020 passed by the Hon'ble Supreme Court of India and later on such demand was revised (reduced/ enhanced for various units) as per the final judgment and order in the said OA/64-2016 (WZ) delivered on 24.01.2022.
- (viii) This Respondent thus states that the said demand for compensation amount of INR 77.513 Lacs under the impugned notice dt 23.10.2020 and alleged challenge under Prayer (a) of the present Appeal do not survive and have become infructuous. Hence Appeal is liable to be rejected being infructuous.

(c) Reliefs sought under sub-clause (i) to (viii) of Prayer Clause (b) are time barred as well as not maintainable

- (i) Since as per order dated 02.05.2024 passed below IA/66-2024 the delay is not condoned in respect of issues raised and reliefs sought under Prayer (b) of the Appeal, thus Prayer (b) stands rejected being time barred. The Appellant has not challenged the said Order dated 02.05.2024 and thus are barred from pursuing the alleged reliefs sought under Prayer (b)(i) to (viii).

- (ii) WITHOUT PREJUDICE and as a matter of abundant caution, the Respondent states that even if the Appeal is considered in terms of said Prayer clause (b), the Appeal is liable to be rejected in limini being hopelessly time barred and not maintainable.
- (iii) Prayer (b)(i) seeks challenge to categorisation of Appellant as polluting unit and under RED category of industries. It may please be noted that the Appellant has been characterised as RED Category industry in accordance with its manufacturing process. Such characterisation is given at the time of obtaining Consent to Operate. No challenge has been set up by the Appellant to the Consent to Operate issued by MPCB (R1) basis which the Appellant is running its plant.
- (iv) Furthermore the said prayer (b)(i) is also infructuous for various reasons stated in respect of prayer (a).
- (v) Prayer (b)(ii) and (iii) seeks exemption for units having their own ETP from any contribution to CETP or contributing to the penalty levied on CETP. The obligations of the CETP members are well defined and can not be challenged under pretext of filing alleged appeal against the impugned order dt. 23.10.2020 issued by MPCB (R1). This also amounts to misjoinder of cause of action. In fact the Respondent No.2 (TEPS) is seeking recovery of contribution from the Appellant towards its environmental responsibility to bear effluent treatment charges and liability to contribute to the 30% of penalty / compensation amount levied on TEPS-CETP as per directions issued by the Hon'ble Supreme Court of India vide its order dt 14.12.2020 passed in CANo. 3638

of 2020. The said recovery amongst other environmental reliefs is sought by the Respondent No.2 in OA/190 of 2023 which is pending before this Hon'ble Tribunal. Present prayer (b)(ii) and (iii) is being pursued now in counter-blast to such demand and seeks a blanket exemption in gross disregard to the applicable laws and directives.

- (vi) Prayer (b)(iv) and (v) is also hopelessly time barred on the face of it, as it challenges the validity of the closure directions/ notices dated 17.05.2017 and 08.08.2018 issued by MPCB (R2) against the Appellant.
- (vii) Prayer (b)(vi) and (vii) challenges the working of or findings of the Expert Committee Report which were adopted by this Hon'ble Tribunal while issuing said final judgment and order dated 24.01.2022 in said OA/64-2016 (WZ). The said order or findings are appealable only before the Hon'ble Apex Court and for that reason, present Appeal is liable to be rejected.
- (viii) Prayer (b)(viii) is vague, baseless and seeks a blanket permission to consume water without following its obligations under the applicable environmental laws and despite being found as a polluting unit. Such reliefs can not be clubbed and pursued under pretext of challenging the impugned order / demand notice dt. 23.10.2020 basis which the present appeal is preferred.

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For various reasons afore stated, the present appeal is liable to be dismissed and rejected with costs.

Place: Pune

A handwritten signature in black ink, appearing to be 'Anand', written over a horizontal line.

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Advocate for the Respondent No.2