

**BEFORE THE NATIONAL GREEN TRIBUNAL, CENTRAL ZONAL BENCH,
BHOPAL**

Appeal No. 03/2015
M/s Kareli Sugar Mills Pvt. Ltd Vs. MPPCB & Anr.

**CORUM : HON'BLE MR. JUSTICE DALIP SINGH, JUDICIAL MEMBER
HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER**

**PRESENT : Appellant : Shri Dharamvir Sharma, Advocate
Respondent No. 1 : Ms. Parul Bhadoria, Advocate for
Shri Purushaindra Kaurav, Advocate
Respondent CPCB : Shri Sandeep Singh, Advocate
Respondent MoEF: Shri Rajendra Babbar, Advocate**

Date and Remarks	Order of the Tribunal
Item No. 8, 9 & 10 (Connected) 3rd November, 2015	<p>These three Appeals has been filed against the notice issued by the MPPCB under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 Annexure 5 whereby direction under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 whereby the MPPCB Respondent No. 1 has directed the Appellant to comply with the directions issued by the CPCB vide their letter No. B-29016/04/06/PC1-1/5401 dtd. 05.02.2014 whereby the Appellant industry which is a sugar industry has been directed “to install online continuous effluent monitoring system at the outlet of the ETP for measurement of parameters like flow, PH, COB, BOD, TDS or some industry specific parameters notified under the Environment (Protection) Act/Rules or as detail in Annexure 2 not later than 31.03.2015”.</p> <p>The submission of the Appellant is that they have already installed of pollution control measures and device as well as effluent treatment plant. It is further submitted that after treatment and the water being recycled it is used for cooling of the power house, Fiberiser Turbine, Mill turbines, wind turbine</p>

and again used for cooling compressor etc. The treated waste water after treatment from the ETP is used for spraying on the Bagasse and further in the plantation and gardening inside the premises of the Appellant itself. As such it is submitted that based upon the aforesaid procedure and utilisation, clearances and consents have been given by the MPPCB and their units are being continuously inspected and the discharge etc. monitored. It is submitted that based upon the directions issued by the Respondent for installation of the online monitoring system it was also required that a bank guarantee of Rs. 25 lakhs to be submitted being 25% of the cost of the online monitoring system which was stated to be costing approximately Rs. 1 crore.

It was further submitted that the sugar industry of the Appellant is a seasonal industry and as such having an online monitoring system to operate throughout the year would not be of any use and its dis-use during the period when the factory of the Appellant are not in operation would render the said device of no use and require maintenance and re-commissioning at the time of re-commissioning of the plant in the succeeding seasons.

It was also submitted that the sugar industry is going through a very lean period and such huge expenditure would put further financial burden on the industry which is already having problems of payment of the sugarcane growers which is in arrears.

After filing the Appeal notices were directed to be issued to the Respondents vide order dtd. 15.01.2015 and an interim order was also passed whereby the Respondent No. 1 was directed not to take any coercive action for insisting on the bank

guarantee against the Appellant on the condition that the Appellant shall place the orders for procurement and installation of the equipment for the continuous online monitoring system.

The Respondents put in their appearance and on 24.02.2015 after hearing the parties it was observed as follows :

“These three Appeals have been filed by sugar industries located in MP.

Firstly, it is contended that the industries in question are only seasonal industries and run between December to March i.e. for a maximum period of not more than 120 days in a year. It is accordingly submitted that the cost of installation of the equipment is very onerous upon such industry.

Secondly, it is contended that none of the industries are in fact discharging any effluent into any water body and are in fact confining the discharge of the effluent within their premises in pakka lagoons constructed for the said purpose and as such the question of any contamination or pollution of any water body i.e. river, lake, etc. arising as a result of the same, does not arise and even the issue of contamination of ground water has been taken care of by construction of pakka lagoons which do not involve seepage through the soil. In other words, it is submitted that the notice issued by the MPPCB in terms of the direction issued by the CPCB in their letter dated 05.02.2014, has not taken into account the specific conditions prevailing and has mechanically issued these directions making them applicable to all the industries based upon the product being manufactured without taking into account the duration of operation of industry process and the matter of discharge, etc.

Since the letter of the CPCB dated 05.02.2014 has taken into account the reason for issuing such directions based upon “for prevention, control or abatement of pollution of stream, wells and air pollution

It is submitted that while the MPPCB has itself decided to withdraw the condition with regard to installation of CSEMS as per the letter of the CPCB (Annexure 2, Item No. 14), the same is not required and only Online Effluent Quality Monitoring system is required. It is further submitted that since the object behind issuing the directions is for controlling the pollution in streams, rivers wells, etc., but in the facts and circumstances of the present case, where there is no discharge of effluents into any stream, river, well or any other water bodies and is contained in lagoons, the same may not be immediately required to be complied with.

It is further submitted that the required equipment is also not indigenously available and in all probability will have to be imported based upon the specifications for the same and for such seasonal sugar industries, the cost

itself may be too much to be borne by such industries which are already suffering with various hardships and in some cases, not even making it even. It was submitted that since, the letter of the CPCB itself takes into account the fact for issuing the said directions on the ground that “it is becoming a need and necessity to regulate and minimise inspection of industries on routine basis”, which is a job to be carried out by the State Pollution Control Board, the industry itself may not be saddled with the entire burden of performing the task of the SPCBs and making it more onerous for the industry. The Government, therefore, must consider sharing of burden for installation of such equipment which as per the assessment made by the SPCB itself may require incurring of huge expenditure, as stated in the letter of 10.12.2014 (Annexure A/5) of approximately Rs. 1 Crore with additional Bank Guarantee required to be given by the industry for Rs. 25 lakhs in favour of the MPPCB. It was contended by the Learned Counsel that in case where such equipment is indigenously not available or not being manufactured requiring import, the least that the Government can do is to waive the requirement of payment of custom duty for the specified equipment.

Having heard the Learned Counsel for the parties, we feel that in the facts and circumstances of the present case, it would be necessary to have the view of the Ministry of Environment, Forests & Climate Change, Government of India and it must take a considered stand on these issues which have been raised in these appeals. We would accordingly, direct the MoEF & CC to be impleaded as party and direct that notices be issued to the MoEF & CC for seeking their response in all these three cases on the issues highlighted above.

Prima facie, we are of the view that based upon the fact situation, a further classification of some heads of the industry of the 17 categories mentioned in the notification may be possible based upon the intelligible differentia which needs to be examined by the CPCB / Ministry.”

After the aforesaid order was passed the interim direction was issued whereby it was directed that the PCB shall not insist upon the submission of the bank guarantee of Rs. 25 lakhs as mentioned in their letter dtd. 10.12.2014 in the case of the Appellant.

On 11.05.2015 Counsel for the MoEF appeared submitted that they will adopt the reply submitted by the CPCB.

The CPCB on its part submitted their reply on 08.05.2015

and justified their stands as per the notification dtd. 05.02.2014 for the installation of the online monitoring system. In the reply filed by CPCB it was submitted that while it is true that the industry of the Appellant is a seasonal one that by itself not ground for excluding the application and installation of the online monitoring system by the said sugar industry as it was a water intensive industry and it was not possible for the entire water to be re-utilised by the industry itself and there was every possibility of the discharge water entering into the underground water system and thereby pollution the same. It was further submitted that all the issues had been reviewed and the CPCB had only reiterated its decision to go ahead with the installation of the online monitoring system with rider that the date for implementation was extended upto 30.06.2015 & the remaining conditions remained intact. In that light so far as the condition imposed by the PCB for installation of the online monitoring system is concerned we find that the same is in accordance with the considered opinion of the CPCB and no fault can be found with the requirement for instalment of the online monitoring system particularly in the case of the present industries where huge quantities of water are being utilised and thereafter discharged by the industry itself. The mere fact that the industry is a seasonal one by itself will not prevent the application of the requirement to install online monitoring system as the same is required to be installed for monitoring of the level of discharge and the type of contamination for pollution which are there in and such water to be discharged by industrial units. The mere fact that it is run for a limited period even then such

contaminated or polluted discharge would be in violation of the provisions of section 26 of the Water Act, 1974. In that light the installation of the online monitoring system by the 17 categories of the industries as mentioned in the notification dtd. 05.02.2015 cannot be vitiated or called into question. As regards the issues which have been raised by the Appellant with regard to the cost likely to be incurred and also the fact that they are required to submit the bank guarantee, we would direct that the MPPCB need not insist upon the said bank guarantee where it is satisfied by the Appellant that orders have been placed for the equipment to be installed in their units. For the aforesaid purpose we would grant ten days time to the Appellant to satisfy the PCB that the orders have been placed and the installation date has been given, so that they would waive the said condition of submission of the bank guarantee.

With the aforesaid direction, the Appeal Nos. 01/2015, 02/2015 and 03/2015 stand disposed of.

.....JM
(DALIP SINGH)

.....EM
(PROF. A.R. YOUSUF)