

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

M.A. No. 137/2015 (WZ)

AND

M.A. No. 177/2015 (WZ)

IN

Application No. 55/2015 (WZ)

Mr. Subhash Ram Krishna Patil Vs. MPCB

AND

Application No. 55/2015 (WZ)

Mr. Subhash Ram Krishna Patil Vs. MPCB

CORAM: HON'BLE MR JUSTICE V.R. KINGAONKAR, JUDICIAL MEMBER

HON'BLE DR. AJAY A. DESHPANDE, EXPERT MEMBER

**Present: Applicant/ Appellant : Mr. Vilas Mahajan, Adv. /
Mr. Pushan Bhule, Adv.**

Respondent No. 1 : Mr. S. Sanyal, Adv.
(In M.A. 177/2015)

Respondent No. 2 : Mr. P. Narayan, Adv.
(In Appl. 55/2015)

**Respondent No. 3 & 4 : Mrs. S.B. Vaidya, &
Mr. V.M. Pardeshi**
(In Appl. 55/2015)

Respondent No. 5 : Mr. D.D. Shinde, Adv.
(In Appl. 55/2015)

Date and Remarks	Orders of the Tribunal
Item No. 3, 4 & 6 28th September, 2015 Order No. 7	<p>We have heard Learned Advocates for the parties.</p> <p>By order dated 9th September, 2015, we directed the parties to file their affidavits and exchange the same amongst themselves so as to complete the pleadings for final hearing. We informed the parties that at least hearing on the question of ad-interim relief, will be taken up if the reply affidavits are filed and, thereafter final hearing will be scheduled. The issue is rather significant in as much as allegedly untreated sewage, is being discharged in river Mutha and Mula which causes pollution.</p> <p>Learned Counsel appearing for Pune Municipal Corporation (PMC), Mr. P. Narayan would submit that due to intervening Ganesh Festival, Officers of the Pune Municipal Corporation (PMC) were engaged in attending the administrative work as well as the law and order work to ensure appropriate immersion of the Ganesh Idols and, therefore, the reply affidavit could not be prepared and exchanged. He assures that within a period of 2 (two) weeks time, it will be filed.</p> <p>So also, it appears that the Applicant, inspite of specific queries, could not place on record map indicating discharge points, wherefrom, the untreated sewage is being discharged in the river which causes the alleged pollution. The discharge points are required to be located in order to apply %Polluter Pays Principle+ in as much as some of the</p>

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developers/builders might be the persons who are discharging the untreated sewage or might be dumping the debris in the river through such channels, mixing it with water used for construction work. Learned Counsel for the Applicant seeks time to place on record authenticated map in order to pinpoint such discharge points and also states that he will make sincere efforts to identify the builders who can be joined in the proceedings for penalising them and asking them to restore the damage caused by taking appropriate remedial measures, through Government agency like Pollution Control Board.

Mr. V.M. Pardeshi, Naib Tehsildar, Pune at S.D.O. Office, appears for the Collector and states that Law Officer is unable to attend due to her difficulty in as much as she has met with some accident and is non-available.

None has appeared for Respondent Nos. 6 & 7 (Environment Department). It is stated that RRZ policy is revoked. We are of the opinion, prima facie, that the issue regarding revocation of said policy is also required to be examined in as much as the Maharashtra Pollution Control Board has expressed opinion about qualitative analysis of the water in the reply affidavit indicating that riverine water at the particular place is of grade A-IV as per the earlier RRZ policy. The Learned Counsel for the Pollution Control Board states that the gradation is in accordance with the earlier RRZ policy and the monitoring results needs to be compared with the approved classification of river, in view of the fact that the earlier RRZ policy has been scrapped by State Govt in Feb 2015.

He further submits that a revised affidavit will be filed with such details and also, all other major sources/ STPs which are operated by the industries and construction project, discharging effluent in the rivers.

It is, therefore, essential to know as to how, the State could invoke the power of taking policy decision when the earlier notification was by way of direction under Section 5 of the Environment (Protection) Act, 1986 and it was not a policy decision of the State. In other words, when the earlier direction was under particular provision of the enactment, normally it could be revised or revoked under the provision of the same Act, by the competent authority, namely, the Central Government or the delegated authority like State Government if the powers are delegated. But taking a policy decision in such a matter, in our view may not be in keeping with provisions of the Environment (Protection) Act, 1986. In this view of the matter, the Respondent No. 6 & 7 shall file their reply affidavit as to how

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revocation of the RRZ directions be not deemed as void ab initio. The Secretary of the Environment Department is directed to depute appropriate and competent person not below rank of Deputy Secretary to file appropriate affidavit which empowers State Government to take such kind of policy decision and whether the issue regarding revocation of the policy was considered in the teeth of the directions which were already issued under Section 5 of the Environment (Protection) Act, 1986 and whether approval of the competent authority for revocation of the policy under the E.P. Act, was obtained by recalling the said directions. The affidavit of the Respondent No. 6 & 7 shall clarify these issues before we take any decision on questions of the RRZ Policy.

We are hopeful that the parties will file their responses before scheduled date of hearing and will not give us any scope for taking coercive action. The pleadings and the documents be exchanged among themselves within 3 (three) weeks and thereafter, instead of taking up the matter for hearing of the question in respect of ad-interim relief, we will hear the same comprehensively for final hearing.

List the matter for final hearing on 27th October, 2015.

A copy of this order be taken by Mr. V.M. Pardeshi for service to the P.A. of Secretary of the Environment Department and the Chief Secretary, Mantralaya, Mumbai and so also the Officer of the MPCB who is present in Tribunal shall simultaneously do the same exercise.

Stand Over to 27th October, 2015.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay A. Deshpande)