

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION NO.46/2015(WZ)**

CORAM:

**Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

**Dinkar Sitaram Dhulgand,
R/o. Mandve Bk., Sangamner,
Distt. Ahmednagar.**

.....Applicant

A N D

- 1. Utech Sugar Ltd.,**
A/P. Kavthe Malkapur,
Tal. Sangamner,
Distt : Ahmednagar.
- 2. Maharashtra Pollution Control Board,**
Kalpataru Point, 3rd Floor,
Sion East, Mumbai 400 022
- 3. Govt. of Maharashtra,**
Environment Department,
Room No.217, (Annexe) Mantralaya
Mumbai 400 032
- 4. Central Pollution Control Board,**
Parivesh Bhavan,
CBD-cum office
Complex,
East Arjun Nagar,
Delhi 110 032

**5. Ministry of Environment,
Forest & Climate Change (MoEFCC),**
Indira Paryawaran Bhavan,
Jor Baug Road,
New Delhi 110 003

6. The Chief Secretary,
Govt. of Maharashtra,
Mantralaya, Mumbai 410 032.

.....Respondents

Counsel for Applicant

Mr.R.B. Mahabal, Adv.

Counsel for Respondent No.1

Priyanka Telang Adv.

Counsel for Respondent No.2 & 3:

Mrs. Supriya Dangare, Adv.

Counsel for Respondent No.4:

Manda Gaikwad, Adv.

P.C.

Date: September 2nd, 2015

ORAL JUDGMENT

1. By filing this Application, Applicant, named above, challenges consent to establish sugar industry of Respondent No.1 granted vide order dated August 6th, 2014 by Respondent No.2-Maharashtra Pollution Control Board.

2. It is not necessary to set out all rival contentions of the parties. Chief bone of contention raised by Applicant Dinkar Dhulgand is that in view of Govt. Resolution dated July 13th, 2009 no industrial activity could be permitted

within distance of 8 kms. from River Mula. He alleged that sugar industry of Respondent No.1 within distance of less than 8 km. being only 4.799 kms. from Mula river as certified by Irrigation Department. According to him, all the relevant facts were purposefully hoodwinked and suppressed by the Respondent Nos.1 to 4 while considering Application of Respondent No.1 for consent to establish the sugar industry. Though, it was not permissible to allow establishment of such industry within the catchment zone of river time as per the RRZ policy as was then existing. No study as required, regarding presence of aquifers below ground, contamination likely to be caused to the river bed and adverse impact on human habitat/living was assessed, hence the impugned consent to establish is liable to be set aside.

3. Challenge said to consent in question in earlier proceedings of Application No.20/2014 was, however, decided by this Tribunal by order dated April 13th, 2015 inasmuch as the RRZ policy itself was revoked by State of Maharashtra as per Govt. Resolution dated February 3rd, 2015. We were also informed that Respondent No.2-MPCB decided to re-instate consent to establish the sugar industry of Respondent No.1 and such communication was issued on April 10th, 2015. So also, Applicant Nanasaheb, who is son of original Applicant Sitaram came forward and

submitted that the complaint given to the MPCB was withdrawn in view of the new RRZ policy which was subsequently cancelled by the State Government. Thus, the Applicant was satisfied with the consent to establish the sugar industry of Respondent No.1.

4. By this Application, however, general direction is sought to declare Government Resolution dated February 3rd, 2015 as illegal, bad in Law, and liable to be quashed being *void-ab-initio*. Incidentally, as a fall out of such declaration the Applicant sought ad-interim relief to stay operation of impugned consent to establish granted to Respondent No.1-sugar industry and stay to the activities of the said industry hereafter. Needless to say, main object of the Application is to challenge the new RRZ policy which is now cancelled by the State of Maharashtra under the Resolution dated February 3rd, 2015.

5. The previous Govt. Resolution dated July 13th, 2009 thus was cancelled and set aside under revised impugned Govt. Resolution dated February 3rd, 2015. Resultantly, the RRZ policy which required location of industry of Respondent No.1 to be established beyond 8 kms. from River Mula was recalled and became non-existent.

6. We have heard learned Advocates for the parties. We have been informed that the issue regarding validity of changed RRZ policy under Government Resolution dated

February 3rd, 2015 is already pending before the Hon'ble High Court inasmuch as PIL (W.P.) No. 45 of 2015 is filed by Social Worker, namely, Shri Vishvambhar Chaudhari challenging such changed RRZ policy. Needless to say in order to avoid conflict of decisions, on the same issue, it would not be appropriate to consider the Application as regards validity and legality of Government Resolution dated February 3rd, 2015 in the context of instant Application unless and until the said PIL (Writ Petition) is either withdrawn or transferred to this Tribunal or otherwise is directed to be decided by this Tribunal under orders of the Apex Court.

7. It is undisputed that Respondent No.1 has incurred huge expenditure for establishment of the sugar industry and practically the construction work is over. Shri P.R. Mane, Sub-Regional Officer of MPCB is present in person, states that the sugar industry has submitted action plan to discharge effluent as per standards at the location to fulfill the requirement in case the RRZ policy is restored after setting aside Govt. Resolution dated February 3rd, 2015. By way of abundant precaution, we directed Respondent No.1 to file affidavit regarding details of methodology and plan to achieve the zero discharge standards for the effluents that would be generated from the sugar industry. In response to the said order dated August 20, 2015, Managing Director of

Respondent No.1 has filed affidavit alongwith the action plan. It is stated that the Respondent No.1 will acquire 12 acres land adjoining or nearby the sugar-industry and will lay down underlying pipeline through which the effluents will be carried from existing ETP to the said land. It is also stated that the ETP will be installed at the source (sugar-industry) of adequate capacity to meet the standards as will be approved by the MPCB. The bagasse generated from industrial unit will also be disposed of by utilizing the same as fuel for co-gen plant. Thus, by adopting such measures, zero discharge effluents system will be effectively implemented. We accept the affidavit and the action plan alongwith the proposal for acquisition of the adjoining land subject to condition that the acquisition proceeding shall be completed within six (6) months by negotiation and report thereof be submitted to this Tribunal alongwith approval of the MPCB for adequacy of the land to be utilized for the purpose of discharging the treated water for plantation, that will be drifted through the pipeline upto the said land. The Respondent No.1 shall also seek approval of the MPCB for ETP of additional capacity, if so needed. This order is subject to change in the RRZ policy and if such change is effected, then it may cause only financial liability for degradation of the environment, if it is so adjudicated. The project activity is permitted inasmuch as RRZ policy itself is

changed and we hold that now, it is an activity which may be regarded as “*fait accompli*”. We also make it clear that this order be not regarded as precedent for any other industry or such kind of activity under the new RRZ policy which is subject matter of challenge before the Hon’ble High Court and may be challenged before this Tribunal.

8. The Application is accordingly disposed off. No costs.

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

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

Dated : September 2nd 2015.

ajp