

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No.123/2018
(Civil Appeal Nos.12038/2018 & 3342/2019)

Sidhgarbyang Kalyan Sewa Samiti

Applicant(s)

Versus

State of Uttarakhand &Ors.

Respondent(s)

Date of hearing: 09.07.2019

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s):

Amicus Curiae: Mr. Raj Panjwani, Sr. Advocate, Ms. Meeral Gopal,
Advocate

For Respondent (s): Mr. Rahul Verma, Addl. A.G for SIDCUL and State of
Uttarakhand
Mr. Mukesh Verma, Advocate for Uttarakhand PCB
Mr. Vivek Goyal, Advocate for JITF ESIP (CETP),
Siarganj

ORDER

1. The issue for consideration is the remedial action against pollution being caused in the ESIPL (ELDECO SIDCUL industrial Park Ltd.) State Industrial Development Corporation of Uttarakhand Ltd (SIDCUL) industrial area, Sitarganj, District Udham Singh Nagar, Uttarakhand. The matter was earlier dealt with vide order dated 13.11.2018, *inter-alia*, directing the CETP operator and the SIDCUL to deposit compensation of Rs. 1 crore, to the extent of 50% each, for the past damage leaving the dispute of apportionment, if any, to be resolved separately. However, vide order dated 25.04.2019 in *Civil Appeal No. 12038/2018, State Infrastructure and Industrial Development Corporation of Uttarakhand Ltd. (SIDCUL) v. Sidh*

Garbyang Kalyan Sewa Samiti & Ors., the Hon'ble Supreme Court permitted the parties to move this Tribunal and raise their grievance which could be considered by the Tribunal afresh. Accordingly, we have heard learned counsel appearing for the SIDCUL and the CETP operator.

2. The grievance of the applicant vide letter dated 19.02.2018 which has been treated as an application is that there was flagrant violation of environmental norms by a large number of industries in the industrial park. Apart from black hazardous dust and foul and obnoxious smell, untreated and hazardous chemicals are discharged in open drains resulting in pollution of ground water and soil in the agricultural fields. Air pollution was resulting in health hazard for the inhabitants. No action was being taken by the concerned authorities.
3. Vide order dated 12.03.2018, this Tribunal directed the State PCB to conduct inspection and identify the industries violating the environmental norms.
4. Vide order dated 23.04.2018, the Tribunal noted that the CETP was not working properly and not treating the effluents discharged by the industries connected to the CETP. The Tribunal directed the CPCB to conduct an inspection and file a report.
5. Vide order dated 31.05.2018, in the light of the report of the CPCB, the Tribunal directed shutting down of industries mentioned in the said order. The CPCB was to submit a further report. Learned counsel for CETP was required to ensure personal presence of the CETP operator.
6. The matter was thereafter considered on 13.11.2018. The said order was passed after duly hearing counsel for the State PCB, State of

Uttarakhand, **SIDCUL**, the Industries and the **CETP operator**. The fact that SIDCUL and CETP were heard is not even disputed by their counsel though a different statement was made before the Hon'ble Supreme Court which statement was clearly erroneous. The order refers to report furnished by the CPCB on 15.06.2018.

7. Observations in the said order, *inter-alia*, are as follows:

“10. Accordingly, we have heard the learned Amicus Curiae as well as learned counsel for CPCB, State PCB, State of Uttarakhand, SIDCUL (Sitarganj), CETP and the industries including the applicants who have sought to be impleaded.

12. Learned Amicus Curiae submitted that the report furnished by the CPCB filed before this Tribunal on 15.06.2018 should be acted upon. Report shows that inspection was carried out during May 16-20, 2018 and May 22-25, 2018. Inspection team comprised of Scientists and other functionaries 11 in number. The inspection team visited 90 industries, out of which 20 had potential of trade effluent generation. The observations and recommendations of inspecting team are that State PCB had not notified the inlet standards for CETP. Out of 19 wet industries, treated waste water from 12 Units was found exceeding the mutually agreed limits (between industry and CETP). One of the units M/s Jainsons Engineering Pvt. Ltd. was not connected to CETP and was discharging untreated effluents in open drains. In respect of many industries validity of consent and authorization had expired, though their applications for renewal were pending. NOC from CGWA had not been taken. There was lack of communication and coordination between CETPs and the industries. Flow meters were required to be installed. Quality of treated effluent was not complying with the



standards which show deficiencies in functioning of the CETPs. The CETP was required to ensure that there is no over flow and should have an irrigation plan. The CETP was working without valid CCA which was required to arrange recycling and reuse of treated effluents to achieve Zero Liquid Discharge (ZLD). Untreated waste water was required to be properly collected and treated. There was a grievance of waste water mixing up with the canal. Soil quality was required to be assessed by the Department of Agriculture. The CETP was not complying with the conditions of maintaining ZLD and to treat the water for irrigation.

15. Having considered the issue mentioned above, we are satisfied that following directions are required to be issued:-

1. The CPCB may forthwith consider whether the norms fixed by the State Pollution Control Board, vide the order dated 14.06.2018, are in order and if not, what modifications are required. Such consideration may take place within one month from the date receipt of a copy of this order.
2. The CPCB may carry out fresh inspection of CETP and the industries in question within one month.
3. The State PCB may take appropriate legal action based on the findings in the fresh inspection report. The action may also include initiating prosecution, imposing penalty, taking performance guarantee from the CETP, as the situation may require.
4. For the past failure as noticed above, we assess the damage to the environment and the inhabitants to be Rs. 1 crore. This amount be deposited by the CETP and the SIDCUL to



the extent of 50% each. Dispute of apportionment, if any may be resolved separately. The amount may be deposited with the CPCB within one month. For any delay, interest @12% per month will accrue. Out of the amount deposited, the CPCB may pay a sum of Rs. 1 Lakh as honorarium to the learned Amicus Curiae. Remaining amount may be spent on restoration of environment, as per norms and action plan.”

8. The objections now filed on behalf of the CETP on 24.06.2019 also show that learned counsel for CETP was duly present on 31.05.2018 as well as on 13.11.2018 (Paras 5 & 6).
9. Stand of the CETP operators is that SIDCUL undertook to develop the industrial park and granted a 'concession' on 23.03.2006 read with agreement dated 14.11.2006 a joint venture company called "ELDECO SIDCUL Industrial Park Limited (ESIPL)." Subsequently, a Lease Deed dated 15.09.2008 was executed in favour of ESIPL. Thereafter ESIPL and JWIL formed a joint venture company- JINDAL ESIPL CETP (Sitarganj) Ltd. to operate the CETP in terms of agreement dated 14.05.2008. CETP entered into an agreement with the concerned industries. The industries discharged effluents beyond the stipulated parameters without proper primary treatment. Due to higher inlet effluents, outlet parameters exceeded the desired limit. Accordingly, CETP should not be liable based on the inspection reports dated 12.03.2018, 23.04.2018 and 29.05.2018.
10. There is no merit in the objection. In the report dated 06.04.2018, it was noted that CETP was discharging effluents in the nearby land. Report dated 29.05.2018 noted that the discharge of effluents exceeded the parameters. Untreated domestic waste water from the

village was also noticed on the land. Consent to operate and authorization was granted only on 31.12.2018 in favour of the CETP with retrospective effect from 31.03.2018. Whatever be the fault of units connected to CETP may at best be *inter-se* dispute between such units and CETP. CETP cannot avoid absolute responsibility for causing pollution by polluting discharge from its outlet resulting in damage to environment and public health. Such pollution being criminal offence can be prohibited, prosecution initiated and compensation recovered. Causing of polluting is not even disputed by CETP or SIDCUL.

11. The learned Amicus has drawn our attention to the inspection reports. The report of inspection dated 21.03.2018 shows that the CETP was not performing for the last three years of its operation.

12. The recommendations therein are as follows:

“Recommendations:

- “1. CETP operator may be directed to pump the effluent from the low-lying areas into CETP and treat it as per the prescribed norms.*
- 2. Since the CETP is not performing since last 03 years of its operation so it is recommended either the operation of the same be taken by SIDCUL or by making an Association of the industries of that Area.*
- 3. CETP is not complying with Zero Liquid Discharge. Water table in this area is high so achieving zero discharge by land disposal is quite difficult task. Area Developer (SIDCUL/ELDECO) may lay the separate line for reverting back the treated effluent to industries wherever possible. CETP operator may also approach to Ministry of Environment Forest and Climate Change for seeking permission to Discharge in nearby Kailash river by making amendment in the condition of EC.*
- 4. SIDCUL may be directed to ensure the compliance and enforcement of conditions of Environmental Clearance in the area.*

5. *M/s. Gujarat Ambuja may be directed to install a Continuous Ambient Air Quality Monitoring Station in the premises towards the village(d/s of the Stack) and connect the same to a server so that SPCB and CPCB may access the same. This unit may also have directed to interlock the operation of Boiler with the Electrostatic Precipitator.*
6. *M/s. Gujarat Ambuja has also to provide ESP on the Boiler capacity 30 Ton as required under S. No. 70 of schedule -1 of Environment Protection Act, 1986.*
7. *Further water-based industries should not be allowed till the CETP has not make necessary arrangements for utilisation of treated effluent effectively.”*

13. Further report in respect of the same inspection filed on 07.04.2018 refers to the results which had not been received at the time of filing of the earlier report. The said report shows the surface water quality taken from three locations and also the soil quality were not meeting the standards. Surface water quality standards are not meeting the norms even with regard to the BOD as well as COD and there was high concentration of toxic metal in the soil. The State of Utrkhand filed an affidavit on 06.10.2018 stating that the State of Utrkhand had accepted the report and action was proposed to be taken under the statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974. The SIDCUL was directed to ensure that the industries as well as the CETP adhere to the norms in terms of the consolidated consent and authorization conditions.

14. The inspection report dated 06.04.2018 was filed by the CPCB before this Tribunal on 30.05.2018 with following observations:

“Observations and Recommendations:

- iv. Almost all the industries have not obtained NOC from the Central Ground Water Authority (CGWA) for extraction of groundwater. UEPPCB/SIDCUL should ensure that all units have permission from CGWA for water extraction.*

- v. As informed by the CETP operator, CETP has been receiving about 2.5 MLD of waste water, however, it has been able to raise bill only for about 1.2 MLD of waste water.

According to him, only 30 units have provided flow meters for measuring the discharge of trade/domestic wastewater to the CETP line. UEPPCB/SIDCUL should ensure that all the remaining units to install the flow measuring devices.”

“3.1 Observations and Recommendations

- i The treated effluent is discharged on land for irrigation at its own land of 20 acres. The irrigation was found improper. No significant plantation was seen in the identified land for irrigation. Therefore, the unutilised treated wastewater from the irrigation land is getting overflowed and accumulated in low lying area and forming a pond. The overflow of this pond finds its path into the Begul canal. The quality of treated effluent (Table-2) w.r.t. the monitored quality parameters BOD, COD and TKN, is not complying either with the prescribed standards for disposal into inland surface water or on land for irrigation. Water sample was also collected from the pond which shows the BOD-221 mg/l, COD-525 mg/l and Boron -5.4 mg/l (Table 3), therefore, it indicates the discharge of untreated effluent from CETP or from other industrial sources. The CETP should be augmented or operated appropriately for discharging the effluent within the prescribed limits for disposal on land for irrigation. The CETP should also ensure that there is no overflow to the adjoining areas. The CETP should submit the irrigation plan and get it approved by Department of Agriculture /UEPPCB.

- ii. CETP was consented for Zero Liquid Discharge (ZLD) condition, vide letter no. UEPPCB/HO/Con-J/54/2014/1479, dated 13.01.2015. The CETP could not achieve ZLD condition with the present infrastructure. Since 31/3/2015, CETP has been operating without valid CCA. As informed, CETP has been applying for renewal of CCA, however, the same has been rejected by UEPPCB, as CETP has not been complying with the consented conditions, such as, (i) treated effluent not meeting the norms, (ii) not complying with ZLD condition, etc. The CETP should not be allowed to operate without valid CCA. The CETP should also make arrangements to

recycle/reuse of treated effluent by member units to achieve zero liquid discharge.”

Recommendations:

“ ii. The CETP should be augmented or operated appropriately for discharging the effluent within the prescribed limits for disposal on land for irrigation. The CETP should also ensure that there is no overflow to the adjoining areas. The CETP should submit the irrigation plan and get it approved by Department of Agriculture/UEPPCB.

iii. The CETP should not be allowed to operate without valid CCA. The CETP should also make arrangement to recycle/reuse of treated effluent by member units to achieve zero liquid discharge.”

15. From the above, it is beyond any doubt that air and water pollution was taking place. While the State PCB is at liberty to take action against individual industries and CETP is also at liberty to make its claim against the polluting industries, the CETP and SIDCUL cannot be absolved. It is the CETP which is responsible for discharging the polluted effluents. As already observed, even if it is to be assumed that individual industries are not pre-treating their effluents, this may give rise to a dispute between CETP and the industries but once there is damage to the environment, the liability for such damage can certainly be fastened on the CETP. Needless to say that environmental liability is governed by strict liability principle and contribution to such damage by others with whom CETP or SIDCUL had arrangement could not be defence to avoid liability to the victims or to the environment.
16. While in pursuance of order dated 13.11.2018, further inspection is to be carried out by the CPCB and the State PCB is to take appropriate action against concerned polluting industries by way of prosecution, recovery of compensation and prohibiting polluting activities, for the failure of CETP and SIDCUL, the compensation of

Rs. 1 crore as determined vide order dated 13.11.2018 stands reiterated. It is not even the case of CETP or SIDCUL that cost of restoration or the extent of loss will be less than such amount which is being determined on *ad hoc* basis being moderate estimate. The amount may be paid within one month from today to the CPCB to be spent for restoration of environment beyond which it will carry interest at the rate of 12%. The CPCB will pay Rs. 1 lakh as honorarium to the Amicus out of the said amount. The CETP and SIDCUL will also be liable to pay a sum of Rs. 5 lakh each towards cost which may be deposited with the CPCB within one month.

17. The CPCB may now furnish a further report in pursuance of order dated 13.11.2018 within one month judicial-ngt@gov.in which may be put up for consideration. The State PCB may also file its report in the matter by email at judicial-ngt@gov.in within one month.

List for further consideration on 23.09.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

July 09, 2019
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