

Item No.03:

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Appeal No. 09 of 2020 (SZ) &

I.A. No.25 of 2020 (SZ)

(Through Video Conference)

IN THE MATTER OF:

Piramal Enterprises Limited
(Formerly Piramal Healthcare Limited)
(through M/s. Pritee Misra – Senior Legal Counsel)
Unit Address: Village – Digwal,
Kohir Mandal, Sangareddy District,
Telangana 502 321.

Regd Office; Piramal Ananta
Agastya Corporate park, Opp. Fire Brigade,
Kamani Junction, LBS Marg. Kurla (West)
Mumbai, Maharashtra 400 070.

...Appellant(s)

Versus

1. Telangana Pollution Control Board
Through its Member Secretary,
Paryavarana Bhavan,
A-III, industrial Estate, Sanathnagar,
Hyderabad, Telangana 500 018.
2. Central pollution Control Board
Through its Member Secretary,
Parivesh Bhawan,
East Arjun Nagar, Near Karkardooma Court,
Shahadra, Delhi 110 032.

...Respondent(s)

Date of hearing: 21.07.2020.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Appellant(s): M/s. Sri. Wasim A. Qadri, Senior Advocate &
Sri. Anubhav Anand Aron

For Respondent(s): Sri. Sai Krishnan for R1.

ORDER

1. The above appeal has been filed by the appellant company against Annexure A1 order passed by the 1st respondent challenging to the extent of imposing Environmental Compensation of Rs.8,31,60,000/- (Rupees Eight Crore Thirty One Lakh and Sixty thousand only) alone relying on the basis of the recommendations of the joint committee and in compliance of the orders of the Principal Bench of National Green Tribunal dated 29.01.2020, which was received by the appellant on 04.02.2020.

2. According to the appellant, their unit is a Zero Liquid Discharge (ZLD) unit and they are operating with valid Consent & Hazardous Waste Authorization dated 26.03.2016 which is valid till 31.01.2021.

3. The authorization was revised on 28.07.2018 due to change in the product mix of the appellant. It is also valid till 31.01.2021.
4. On the basis of the letter received from one Shri. K. Lakshma Reddy alleging that untreated effluents were being discharged by the appellant along with two other industries thereby adversely affecting the water quality and availability of groundwater and drinking water to the inhabitants of the surrounding area.
5. On the basis of that letter, the Principal Bench of National Green Tribunal, New Delhi had Suo Motu registered a case as *Original Application No. 688 of 2018 titled as “K. Lakshma Reddy Vs. M/s. Siddi Vinayaka Oil Mill & Others, and as per order dated 23.10.2018, which is produced as **Annexure A-6**, the Principal Bench had directed the 1st respondent, Telangana State Pollution Control Board and the District Magistrate of Sangareddy District to look into the allegation and take appropriate action and submit the report on or before 31.11.2018.*
6. On 14.12.2018, the Principal Bench of National Green Tribunal had considered the action taken report filed by the 1st respondent and also by the District Magistrate Sangareddy District, and passed **Annexure A-7** order directing

the 1st respondent not only to prosecute but also to recover compensation for the damages caused to the environment from the appellant and other erring units applying “Polluter Pay” Principle, having regard to the financial capacity of the Appellant as well and assess damage to the environment, as per principles laid down in the decision reported in ***M.C. Metha Vs. Union of India (1987) 1 SCC 395*** and ***Sterlite Industries Limited Vs. Union of India 2013 (4) SCC 575***.

7. The Principal Bench as per **Annexure A-8** further vide order dated 15.03.2019, considered further action report submitted and justified the association of representative from the Central Pollution Control Board with Telangana Pollution Control Board in monitoring and assessing environmental compensation.
8. Further as per **Annexure A9** order dated 08.08.2019, in the same matter, the Principal Bench considered the question of fresh inspection to be conducted involving the presence of representative from the Central Pollution Control Board, Indian Institute of Technology (IIT) Chennai, National Environmental Engineering Research Institute (NEERI), Nagpur, and the State Pollution Control Board and directed the committee to submit further report in this regard.

9. Thereafter, as per order dated 13.11.2019, the Principal Bench in the same case, after extracting the report filed by the expert committee, directed the State Pollution Control Board to take further follow up action including recovery of the assessed compensation in accordance with law. The compliance of observation and the recommendation was also directed to be ensured and also directed that since, all these industries are red category unit, the compliance of the environmental norms had to be regularly monitored and inspection to be carried out at least once in 3 months and with that direction, the application was disposed of.

10. It is on that basis that the 1st respondent had passed impugned Annexure A1 revocation order dated 29.01.2020, purporting to be Under Section 33 (A) of Water (Prevention and Control of Pollution) 1981 and 31 (A) of Air (Prevention and Control of Pollution) 1974, issuing closure direction along with direction to deposit the environmental compensation assessed by the committee reiterating the orders of this Tribunal dated 13.11.2019.

11. The revocation order as such is not under challenge. The appellant is only challenging this impugned order only to the extent of imposition of environmental compensation alone, as

according to them, no opportunity was given to them before fixing the quantum of compensation.

12. When the matter came up for hearing today through Video Conference, Sri. Wasim A. Qadri Senior Advocate, along Sri. Anubhav Anand Aron represented the counsel the appellant. Sri. Sai Krishnan represented 1st respondent. This Tribunal while admitting the appeal dispensed with notice to 2nd respondent as the order was passed by the 1st respondent alone.

13. The learned Senior Counsel appearing for the appellant, relying on the order of this Tribunal in Appeal No. 01 of 2020 (SZ) (***M/s. Indo Shell Cast Private Limited Vs. Tamil Nadu State Pollution Control Board & Ors.***) and order of the Principal Bench in Original Application No. 688 of 2018 dated 15.03.2019, ***K. Lakshma Reddy Vs. M/s. Siddi Vinayaka Oil Mill & Ors.***, dated 15.03.2019, argued that in both these cases, this Tribunal had come to the conclusion that the question of imposing compensation can be passed only after giving reasonable opportunity to the unit against whom it was intended to be imposed in accordance with law.

14. On the other hand, the learned senior counsel appearing for the 1st respondent submitted that since opportunity had been

given to the appellant by the committee which assessed the compensation which was considered by the Principal Bench of National Green Tribunal and directed to take steps for recovery of the compensation in accordance with law, the applicant is not entitled to challenge the quantum of compensation fixed by the committee before this forum.

15. Heard. We have considered the submissions made by the learned senior counsel appearing for the appellant as well as the first respondent.

16. It is an admitted fact that the Principal Bench of National Green Tribunal had registered Suo Motu proceedings as Original Application No. 688 of 2018 under the caption ***K.Lakshma Reddy Vs. M/s. Siddhi Vinayaka Oil Mill & Ors.***, on the basis of the letter sent by the applicant in that case alleging discharge of untreated effluents from the respondent units, including the appellant unit, shown herein and causing pollution to ground water. But in that case, no notice was issued to the industrial units. The Principal Bench directed the State Pollution Control Board and the District Collector, of the particular place to look into the allegations and submit a factual as well as action taken report.

17. It is thereafter, that the subsequent orders referred to above were passed by the Tribunal wherein the Tribunal had considered the report submitted by the committee and directed the State pollution Control Board to take appropriate action in accordance with law, on the basis of the recommendations of the committee including realisation of compensation assessed.

18. There also it may be mentioned here, that none of the industrial units were heard on the committees' report and in one of the order namely order dated 15.03.2019, it was specifically mentioned that if the industrial unit was aggrieved by the order if any passed by the pollution control Board, then if any appeal has been filed against the same, that could be considered in appropriate manner and specifically mentioned that there was no necessity to hear the industrial units before the Tribunal at that time. So, that shows that the Tribunal had neither considered the report on merit nor accepted the report as such, but only directed the Pollution Control Board to take appropriate legal action in accordance with law against the erring units including imposition of environmental compensation as suggested by the committee.

19. Since, this Tribunal had already noticed that there was no necessity to hear the industrial units at that stage, while disposing the Original Application pending before that Tribunal, that only indicates that the Pollution Control Board was given liberty to take action on the basis of the report of the committee against the erring units in accordance with law, after following the principles of natural justice of being heard before passing any order.

20. It is seen from the impugned order that there was no prior show cause notice issued by the Pollution Control Board to the erring unit as to why the amount of compensation fixed by the joint committee should not be imposed against them, so that they would have got an opportunity to explain their objection regarding the quantum of compensation to be payable.

21. On the other hand, the Pollution Control Board had reiterated all the sequences of events that happened pursuance of the orders of the Principal Bench of National Green Tribunal in *Original Application No. 688 of 2018 in K. Lakshma Reddy Vs. M/s. Siddhi Vinayaka Oil Mill & Ors.*, and the directions issued by the Principal Bench to take action on the basis of the report and issued this impugned order.

22. Since, the appellant is not challenging the revocation order

on the other grounds, we are not going into those aspects in this appeal and if there is any violation of conditions imposed found, then they are entitled to pass orders Under Section 33 (A) of Water (Prevention and Control of Pollution) 1981 and 31 (A) of Air (Prevention and Control of Pollution) 1974.

23. Since, compensation being a monetary liability, before fixing the same, an opportunity ought to have been given by the Pollution Control Board to the appellant unit which is the basic principle of following the principles of natural justice of being heard before final orders are being passed. But, that has not been done in this case. When similar issues have come before this Tribunal in *Appeal No. 01 of 2020 (M/s. Indo shell Cast Private Limited Vs. Tamil Nadu Pollution Control Board & Ors.)* this Tribunal had set aside the order of compensation imposed straight away without giving an opportunity to the appellant in that case and directed to treat that order as regards imposition of compensation as show cause notice and after giving an opportunity to the appellant in that case to pass appropriate orders in accordance with law.

24. Even the order of the Principal Bench in *Original Application No. 688 of 2018* relied on by the 1st respondent also gives an indication that the final orders will have to be passed on

the basis of the observations and findings of the joint committee appointed by the Tribunal only after complying with the procedure laid down in accordance with law and the units were directed to challenge that order before the appropriate forum and their objections regarding the committee's report has not been considered by the Principal Bench as well. That also indicates that before passing the final order, opportunity has to be given to the erring unit regarding the reasons for future order to be passed including imposition of environmental compensation.

25. Since, the principle of natural justice has been violated in this case before passing the final order to the extent of imposing environmental compensation merely relying on the direction issued by the Tribunal, it is as against law and the same is liable to be set-aside. So, we set aside the impugned order dated 29.01.2020 by *Order No. MDK-07/TSPCB/TF/HO/2016- dated 29.01.2020* issued by the 1st respondent only to the extent of imposing environmental compensation alone as that alone was challenged before this Tribunal.

26. We also direct the 1st respondent Pollution Control Board to consider this order in respect of imposing environmental compensation as show cause notice and give an opportunity to the appellant to submit their explanation to the same to that

extent alone regarding the quantum of environmental compensation to be fixed and also give them an opportunity of the personal hearing and then, the Pollution Control Board is directed to dispose of this matter in accordance with law.

27. So, the appeal is disposed of as follows:-

(a) The impugned order *Annexure A-1* namely Order No *MDK-07/TSPCB/TF/HO/2016-* dated *29.01.2020* passed by the 1st respondent, to the extent of fixing environmental compensation of Rs. 8,31,60,000/- (Rupees Eight Crore Thirty One Lakh and Sixty thousand only) payable by the appellant unit alone is set aside.

(b) The 1st respondent Pollution Control Board is directed to consider the impugned order to the extent of imposing environmental compensation alone, as a show cause notice issued to the appellant as to why so much amount should not be imposed as environmental compensation.

(c) The appellant is directed to submit their objection to that extent alone before the 1st respondent within a period of 15 days from today.

(d) If the Pollution Control Board wants to issue any fresh show cause notice showing the details of calculation as to how the environmental compensation has been arrived at, they are at liberty to issue the same as well in addition to the present direction issued in the impugned order to the above extent and they can do the same within a period of one week from today.

(e) If such a notice is also issued, then the appellant is directed to submit their objections to the same within a period of further one week, so, that the Pollution Control Board can consider their objection and pass appropriate orders in accordance with law.

(f) The Pollution control Board is also directed to give an opportunity of personal hearing if asked for and then pass final orders in the matter in accordance with law at the earliest at any rate within 45 days from the date of receipt of this order.

28. With the above directions and observations the appeal is disposed of.

29. I.A. No. 25 of 2020(SZ) is also disposed, since the appeal has been disposed of.

.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Saibal Dasgupta)

**Appeal No.09/2020 &
I.A. No.25/2020,
21st July, 2020. Sr.**

NGT