

Tanaji Ruikar vs Municipal Corporation Of Kolhapur on 30 November, 2022

Item No. 9

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

Original Application No. 102/2021(WZ)

Tanaji Ruikar

.....Applicant

Versus

Kolhapur Municipal Corporation & Ors.

....Respondent(s)

Date of hearing: 30.11.2022

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Applicant	:	Mr. Omkar Wangikar, Advocate
Respondent(s)	:	Mr. Sameer Tambekar, Advocate for R-1 & 2 Dr. Vijay Sarjerao Patil for R-1 & 2 Mr. Vilas Jadhav, Advocate for R-4/MPCB Mr. Rahul Garg, Advocate for R-5/CPCB Mr. Aniruddha Kulkarni, Advocate for R-6/Envtt. Deptt.

ORDER

1. This application has been moved seeking direction to be issued against the Respondent No. 3/Collector, Kolhapur District & Respondent No. 4/Maharashtra Pollution Control Board (MPCB) to take necessary action against the Respondent No. 1/Health Officer, Kolhapur Municipal Corporation & Respondent No. 2/The Commissioner, Kolhapur Municipal Corporation. It is further prayed that slaughter house run by the Respondent no. 1/Health Officer, Kolhapur Municipal Corporation should be directed to be closed and further prayed that an Expert Committee be constituted to quantify the environment losses caused.

2. In brief facts of the case are that the Respondent Nos. 1 & 2 are running the slaughter house illegally without permission from Maharashtra Pollution Control Board (MPCB). The said Respondents are discharging effluent into the ground water, drains and rivers and extracting ground water without permission from any lawful authority.

The Applicant received an inspection report in respect of slaughter house being run by Municipal Corporation at Bapat Mala, Kolhapur on 08.12.2021, which was prepared by Sub-Regional Officer, MPCB, Kolhapur, according to which, approximately 62-70 animals are being slaughtered daily at the said site and as per the record, this site is operating since 1972 without any permission. The unit of Respondent No. 1 has provided effluent collection tank and bio-gas plant but during visit, collection tank and bio-gas plant were found not in operation. Based on the inspection report dated 08.12.2020, the Regional Officer, Maharashtra Pollution Control Board (MPCB), Kolhapur issued a show cause notice dated 14.12.2020 to Respondent No. 1/Health Officer, Municipal Corporation, Kolhapur, stating that the slaughter house was being operated without Consent to Operate from the MPCB since a long period, nor was there any ETP and bio-gas plant in operation. Hence the above prayers have been made.

3. When the matter was taken up by us on 11.01.2020 for the first time, we had directed for issuance of the notices upon the Respondents as well as we constituted a Joint Committee to submit factual and action taken report. In compliance with that, the Joint Committee has submitted its report. The observations and findings of the said Committee are as follows:-

"Based on the inspection carried-out to assess the various violations mentioned in the aforesaid Hon'ble NGT order, information submitted by the KMC, observations & findings of the joint committee are given as below:

Slaughter house of KMC is operational since 1972. It is gathered from MPCB that since inception, the slaughter house is operational without valid Consent to Establish & Consent to Operate from Maharashtra Pollution Control Board (MPCB). It is gathered that MPCB has issued closure directions u/s 33A of The Water (Prevention and Control of Pollution) Act, 1974; 31A of The Air (Prevention and Control of Pollution) Act, 1981 to the slaughter house of KMC for operating slaughter house without valid CTO. Copy of closure directions issued by MPCB is given at Annexure-V. In compliance to the aforesaid MPCB directions, it is observed that the slaughter house has not closed its operations and water, electricity supply also not disconnected by the concerned authority(s). During joint committee inspection on 25/02/2022 (afternoon), the slaughtering activities were not observed; as informed by the Health officer of KMC, all the slaughtering activities are carried-out during forenoon only.

As per the information provided by KMC, only goat and sheep are slaughtered in the slaughter house through manual slaughtering. As per the statistics provided by KMC w.e.f. April, 2019 to February, 2022, the maximum animals slaughtered in a month is 2,587 nos. According to the document prepared by CPCB on "Characterization, Waste Management Practices & Best Available Pollution Control Technologies in Slaughter Houses", 2017 the said slaughter house is categorized as small based on the total no. of animals slaughtered i.e. "Small: Less than 50 large animals i.e. bovines per day, or less than 300 small animals i.e. goat and sheep per day (any day in a week)".

Out of 128 registered butcher shops within the KMC jurisdiction, only 40-50 butcher shops are sending the animals (goat/sheep) varying from @ 24 -- 2,587 nos. per month. It is gathered from KMC that rest of the butcher shops are slaughtering the animals illegally without sending to the centralized slaughter house facility of KMC and selling the meat without duly verified, certified & stamped by the authorized veterinary doctor of KMC.

The slaughter house has a lairage with reported total holding capacity of 290 animals. On the day of inspection, about 30-35 animals were found kept in the lairage.

Slaughtered animals (carcass) along with blood are directly given to butcher shops immediately on daily basis hence there was no refrigeration system observed at the slaughter house.

The ETP comprising biogas plant operates on the principal of "Nisargruna" technology developed by Bhabha Atomic Research Centre (BARC). It mainly consists of primary digester (aerobic) and main anaerobic digester. Reported design capacity of the primary digester is 50 m³ and the retention period is about 6 days. Similarly, reported design capacity of the main anaerobic digester is 250 m³ (5 MT/day) and the retention period is about 30 days. Operation & maintenance activities of ETP has been outsourced to M/s Enprotech Solutions, Pune.

Digested slurry along with the supernatant is drained into sludge drying beds. The filtrate from sludge drying beds is partly reused in slurry preparation to maintain the desired microbial concentration. It is observed that KMC has not provided polishing treatment at the facility for the treatment of excess filtrate and supernatant, instead sending the said streams (i.e. excess filtrate, supernatant) are transferred into mobile sewage vehicle on piece-meal basis for further treatment at Bavda STP, operated by the KMC.

The dried sludge is collected by KMC and used as a soil conditioner for the gardens located within the KMC jurisdiction.

As informed the maximum quantity of biogas generation is about 300 m³/ day. The gas generated is collected in the floating dome which is further transferred to biogas balloon, after biogas purification through series of H₂S scrubbers & CO₂ scrubbers, which is used to run Biogas Genset (50 KVA) during breakdown of power. The reported maximum power generation is 450 KWH.

No log book is maintained to record the operational parameters of the biogas plant w.r.t. feed rate, pH and quantity of filtrate & supernatant disposed for treatment at captive STP and sludge generated & disposed. Also, monitoring devices like flow meter for bio gas and separate energy meter are not installed. The slaughter has a bore well connection having depth about 180 ft. and NOC is obtained from CGWA on 24/02/2022 for extraction of ground water. Approach for damages for contravening mandatory provisions of environmental laws In the matter of Civil Appeal NO. 10854 OF 2016; M/s Goel Ganga Developers India Pvt. Ltd. Versus Union of India & Ors. the Hon'ble Supreme Court vide order dated 10/8/2018 upheld Rs. 05 crores on project proponent as levied by the Hon'ble NGT for contravening mandatory provision of Environment Laws and for not obtaining the consent from the Board. Vide para 57 of the said Hon'ble Supreme Court order, it has

been directed that "(...)The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws."

"Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" outlines a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies listing the instances for taking cognizance of cases fit for violation and levy environmental compensation. The same has also been referred by the Hon'ble NGT in its order (para 14 to

16) dated 28/8/2019 in the matter of Original Application No. 593/2017 titled Paryavaran Suraksha Samiti & Anr.

Versus Union of India & Ors. The instances considered for levying Environmental Compensation (EC) in the said report are:

- a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) Accidental discharges lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment - land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated/partially treated/ untreated effluents to ground water.

Though such listed instances may not be directly applicable in the current matter for arriving at the damages amount for contravening mandatory provisions of environmental laws (w.r.t. establishment of slaughter house without obtaining CTE, continued operation of slaughter house without CTO till date), an attempt is being made by this joint committee to assess the environmental compensation using the formula prescribed in the said CPCB report which may be taken as damages amount for contravening mandatory provisions of environmental laws. The formula takes into account of number of days violation took place, pollution index of unit, scale of operation, location factor based on population and an amount factor in Rupees. For illegal operation of slaughter house without obtaining CTE & CTO Environmental Compensation (EC) in Rupees as mentioned in the aforesaid CPCB report = $PI \times N \times R \times S \times LF$ Where, EC is Environmental Compensation in Rupees PI = Pollution Index of industrial sector/Project N = Number of days of violation took place R = A factor

in Rupees for EC S = Factor for scale of operation LF = Location factor PI = Pollution Index of industrial sector/project Considering the project under Red category as per CPCB modified directions no. B-

29012/ESS/(CPA)/2015-16 dated 07/3/2016. Hence, as per aforesaid CPCB report, $PI = 80$.

N = Number of days of violation took place for which violation took place is the period between the day of violation observed and the day of compliance verified by CPCB/SPCB.

R = A factor in Rupees, which may be a minimum of 100 and maximum of 500. The aforesaid report also suggests to consider R as 250, as the Environmental Compensation in cases of violation. Hence, $R = 250$. S = Factor for scale of operation.

For small $S = 0.5$, For medium $S = 1$ and larger unit $S = 1.5$. As per CPCB document on "Characterization, Waste Management Practices & Best Available Pollution Control Technologies In Slaughter Houses" published vide no. IPC-IV/Project-SH/2017-18, dated 23/10/2017, the scale of operation is categorized as; Small: Less than 50 large animal i.e. bovines per day, or less than 300 small animal i.e. goat and sheep per day (any day in a week). As information provided by Health officer, Kolhapur Municipal Corporation, maximum no. of animals (sheep/goat) slaughtered per day is 90. Hence, scale of operation- S is 0.5.

LF = Location factor.

It is based on the population of the city/town and location of the industrial unit on the location of the industrial unit. Since the population of Kolhapur is less than one million, $LF=1$.

Considering reference from Section 15, Sub-Section 3 of The National Green Tribunal Act, 2010 and to limit a period since when default/non-compliance is to be considered for assessing environmental damage and compensation, the period of default/non-compliance has been taken into account in the past five years from the day OA no. 102 of 2021 (WZ) was filed before Hon'ble NGT on 14/12/2021) and till the date of Hon'ble NGT order (i.e. 11/01/2022) viz. 14/12/2016 to 11/01/2022, total number of days violation (N) took place without obtaining mandatory CTE/CTO from MPCB, comes out to be 1,854 days.

Based on consideration of above w.r.t. a), the environmental compensation calculation is depicted as below.

$$EC = PI * N * R * S * LF$$

PI	N	R	S	LF	EC (in Rs.)
80	1,854	250	0.5	1	1,85,40,000

Based on above, the environmental compensation as damages for contravening provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 i.e. without obtaining CTE & CTO from MPCB is worked-out to be Rs. 1,85,40,000/- (Rupees One Crore Eighty-Five Lakhs and Forty Thousand Only)."

4. The stand taken from the side of Respondent No. 1/The Health Officer, Kolhapur Municipal Corporation and Respondent No. 2/The Commissioner, Kolhapur Municipal Corporation is that the slaughter house is maintaining various log book for the purpose of maintaining record of activities since the plant was in operation. Due to low pressure of bio-gas and moisture content into bio-gas, flow meter got damaged.

The unit is having mechanical scale type flow measuring method. Bio-gas plant is part of slaughter house so separate energy meter is not installed at the site. The Committee has specifically observed that the instances which are required to be considered for levying environmental compensation, may not be directly applicable in the current matter for arriving at the damages amount but it has assessed the environmental compensation using the formula prescribed by the CPCB, which is erroneous. Since the slaughter house is having appropriate system, nothing is discharged from the premises without treatment. Non-

availability of consent is technical lacuna, which cannot be the sole ground of levying environmental compensation.

5. According to the modified guidelines of CPCB, the slaughter house does not fall under the Red category as it does not include meat processing system. As observed in the report, only small animals are slaughtered and are sent as per the demand of shop owners. The Answering Respondent had applied for grant of Consent through online mode and that the said application is still pending. The number of days of violation needs to be reduced by excluding the days from the date of application for the consent.

6. The stand taken from the side of Respondent No. 4/MPCB is that it has assessed environmental compensation on account of violation of environmental norms by the Respondent Nos. 1 & 2 as per the CPCB guidelines and the formula prescribed. Accordingly, it has calculated the environmental compensation to the tune of Rs. 1,85,40,000 /-. The Closure Notice had also been issued on 10.12.2021. The Prosecution Notice has been issued against the Respondent No. 1 under Section 26 & 31(A) of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

7. The Respondent No. 5/CPCB in its affidavit has stated nothing but only the position of law.

8. From the side of Respondent No. 6/Ministry of Environment, Forest & Climate Change (MoEF&CC), learned Counsel Mr. Aniruddha Kulkarni has appeared though he has not filed any reply affidavit.

9. Heard the arguments of the learned Counsel for the Applicant as well as the Respondents.

10. The learned Counsel for the Applicant has vehemently argued that the activities of the Respondent Nos. 1 & 2 is not falling in Red Category.

He has also drawn our attention to page no. 178 of the paper book, where-in the observations are made by the Joint Committee that "though such listed instances may not be directly applicable in the current matter for arriving at the damages amount for contravening mandatory provisions of environmental laws", but still they have applied CPCB formula for arriving at the calculation of the environmental compensation, which is erroneous. Further, he urges that the application for Consent to Establish and Consent to Operate was moved on 09.12.2020 but till date, no consent has been allowed.

11. The learned Counsel for the Applicant has further pointed out the closure order dated 10.12.2021, which is annexed at page nos. 192-193 of the paper book and states that the same is not a closure order rather it is a notice issued to them to show the reason as to why the unit be not closed.

12. We are not in agreement with the argument made by the learned Counsel for the Respondent Nos. 1 & 2 because it is well established from the evidence on record that the category of the industry being run by the Respondent No. 1, is categorized as red and that the closure order is specifically passed by the MPCB on 10.12.2021, keeping in view the fact that the said unit was being operated without having consent. The formula on the basis of which compensation has been calculated, is absolutely correct because it has been followed in various other Cases also. The argument regarding exclusion of period subsequent to 09.12.2020 also does not appear to be reasonable because unless the consent was granted, the Respondent Nos. 1 & 2 did not have any right to continue with the operation. Therefore, we find that the violations which have been noticed in the Joint Committee report, are well established and the calculation which has been made of the compensation, is absolutely correct in our estimation. Hence, we allow this application and direct the Maharashtra Pollution Control Board (MPCB) to realize the amount of Rs.

1,85,40,000 /- from the Respondent No. 1 by way of environmental compensation within a period of 30(thirty) days from today. The amount which is realized as environmental compensation shall be utilized for improvement of environment in Kolhapur District.

13. We further direct that the decision on the application of Respondent No. 1 for granting consent shall be taken by the Maharashtra Pollution Control Board (MPCB) within a period of 15(fifteen) days of this order.

14. With above directions, we dispose of this application.

15. Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM November 30, 2022 Original Application No. 102/2021(WZ) P.Kr