

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

Appeal No. 17/2019(CZ)

M/s Umar Enterprises

Appellant(s)

Versus

State of Madhya Pradesh & Ors.

Respondent(s)

Date of hearing: 09.08.2021

Date of uploading : 13.08.2021

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Applicant(s):

Mr. Dharamveer Sharma, Adv.

For Respondent(s):

Ms. Nimisha Nayak, Adv.
(on behalf of Mr. Sachin K. Verma, Adv.
Ms. Parul Bhadoria, Adv.

ORDER

1. Challenge is the order dated 15.11.2019 passed by the State Appellate Authority and further with the prayer to quash the condition imposed at serial no. 7 of order dated 06.02.2019 annexed as Annexure-7 with the Memo of Appeal on the following grounds :

- i. Because, the impugned order dated 15.11.2019 passed without appreciating to the facts that, the appellant industry is running in a designated industrial site since last 10 years in the allotted site for the purpose of Bone Crushing only by Respondent No-3, District Trade and industrial center and complied the first phase of directions passed by this Hon'ble Tribunal and also regularly the directions of MPPCB. The appellant's unit has not violated the terms of Consent granted by the respondent MPPCB. Therefore, the impugned order deserves dismissal.

- ii. Because, the appellant industry is defined under micro size unit. The Respondent No-2, MPPCB has granted Air & Water Consent and further Consent to Operate after due process of rules. No violation has ever been found against the appellant unit in earlier occasions. The condition imposed by Respondent No-2, for shifting the unit in 18 months even after finding the compliances of the directions are in order is illegal, unconstitutional and against the law need intervention of this Hon'ble Tribunal to protect rights of appellant and secure environmental justice.

- iii. Because, the respondent no-2, MPPCB acted against the order passed by the Hon'ble Tribunal on 30.08.2017 and issued closure on 13.10.2017. The Hon'ble Tribunal vide it's order dated 30.08.2019 has granted time for compliance of construction of shed in two phases up to 30.06.2019. However, the respondent closed the unit on 12.10.2017 and issued closure letter a day after on 13.10.2017 in less than one and half month from passing the Hon'ble Tribunal order on 30.08.2017. That on 06.02.2019 the Respondent No-2 allowed to operate after finding the due compliance by the appellant unit with additional condition to shift the industry. Now, the situation before appellant is whether to continue construction as per Hon'ble NGT Order and invest more money upon the industry which has to be vacated in next 6 months by the impugned order dated 15.11.2019. This has created threat to the appellant begs seeks indulgence of this Hon'ble Tribunal for justice.

- iv. Because, appellate authority while issuing impugned order has no power to issue direction regarding dismissing the appeal on the ground of foul smell coming out from the unit which cannot be ignored. The respondent no 2, competent authority Board vide it's order dated 06.02.2019 has stated that, the ground which were non compliant has been rectified and complied by the appellant unit. Whereas, the impugned

order dated 15.11.2019 in its operative part have stated that, Hon'ble NGT Directions has not been observed. The authority cannot blow hot and cold in one breath and impugned order is passed on some extraneous consideration best known to them deserve straight away dismissal by this Hon'ble Tribunal.

- v. Because, the appellant industry is operating after due permission in the designated industrial area exclusively allotted for the operation of the Bone Crusher Unit vide lease deed dated 22.07.2008 for the lease period up to 30 years. That, the board has exceeded its power to order of shifting of the appellant unit which has been allotted by respondent no-3 for 30 years.
- vi. Because, the appellant industry is an environment friendly unit utilizing the waste disposal bones collected from the various locations such as gram panchayat, Nagar-palika, Municipal Corporation, slaughter house, dead animals from forest area which is the need for proper disposal of the animal waste in this the area. The bone crushing unit of appellant is not only environment friendly but also source of business for the appellant, its family and the manpower engaged in operation of the unit. Closing the unit without any reason shall affect the livelihood of the laborers engaged and the appellant.
- vii. Because, the respondent authority has wrongly concluded about the foul smell due to the appellant unit whereas, the fact is a liquor manufacturing company spread in over 10 Acres is situated close proximity (within 800Meters) to the appellant unit which is highly malodorous and stinking with foul smell in whole area. The appellant industry is a zero discharge unit. The appellant is facing harassment and annoyance of the respondent due to the act of another industry.
- viii. Because, the impugned dated 15.11.2019 order concluded in contrary to the order dated 06.02.2019 issued by MPPCB, whereas it's found that, by the

respondent no-2, MPPCB the appellant industry has complied all the earlier directions issued against appellant unit. However, the respondent no-2 issued fresh notice with a new condition to shift the unit within 18 months which is in it against the order of this Tribunal dated 30.08.2017.

- ix. Because, the appellant has invested huge amount in machineries and established after due permission and the types of unit can operate only in the notified industrial area, now compelling to shift within 18 months shall deprived the appellant from his business and livelihood.
- x. Because, the appellant has also invested huge amount in establishment of the unit, Lease rents, yearly rents, investment in machineries, equipments and employed laborers. Further appellant has invested in covering sheds in two phases, plantations, additional boundaries and other needful precautionary measures. The appellant has also abided by the directions issued by the respondent MPPCB. The appellant has also continuing liabilities of maintenance fees imposed by respondent no-3, DTIC.

- 2. The brief facts giving rise in the present appeal are that Appellant, set up an industry in the area of Pipalkheriya Industrial Area District Industrial Centre, District -Raisen (M.P.) for the purpose of crushing and grinding the Bones, which is used for essential ingredient of various medicines, edible gelatine and organic manure in 2008. In the year 2017 one Abdul Latif Khan filed an Original Application No. 69/2017 titled as *Abdul Latif Khan vs. M/s Umar Enterprises & Ors.* before this Tribunal for violation of Environmental Laws and said conditions and the Tribunal after hearing the parties disposed the Original Application on 30.08.2017 with time bound direction to the Appellant to cover the industry in two phases, accordingly, 6000 sq. ft. area to be 30.06.2018 and

remaining 6000 sq. ft. area upto 30.06.2019. For reference the order dated 30.08.2017 passed in O.A NO. 69/2017 is reproduced below :

“None for the Applicant. Respondent No. 1 present in person through proprietor as well as the Learned Counsel Shri Rohit Sharma and Ms Parul Bhadoria, Learned Counsel on behalf of the MPPCB.

We have examined the reply submitted both by the Respondent No. 1 as well as the Respondent No. 4. The O.A. has raised the issue with regard to the industry of the Respondent No. 1 situated at Pipalkhriya, District Raisen which is a bone crushing unit. The allegations made in the O.A. were with regard to the pollution being caused as a result of aforesaid activity. Notices were ordered to be issued to the Respondents vide order dtd. 03.07.2017. On 31.07.2017 after return of services Tribunal had directed the MPPCB to carry out the inspection. Today, in response to the aforesaid directions the MPPCB have submitted their reply as well as copy of the inspection report. The said report reads as follows :

निरीक्षण अवलोकन :-

(1) उद्योग का क्रेशन प्लांट निरीक्षण दिनांक को उत्पादनरत्नहीं पाया गया। परिसर में रखा सूखा कच्चा माल व्यवस्थित रूप से शेड के अंदर रखा पाया गया। क्रश की गई वोन बैगस में भरी हुई एवं अन्य बारीक पिसा हुआ उत्पाद शीट्स से ढका हुआ शेड के अंदर परिसर में रखा हुआ देखा गया। निरीक्षण दिनांक को परिसर में किसी भी प्रकार का गीला कच्चा माल नहीं पाया गया।

निरीक्षणकर्ताओं के अभिमत :-

(2) निरीक्षण करने पर यह पाया गया कि उद्योग द्वारा क्रेशर इकाई में उस्ट के उत्सर्जन के नियंत्रण हेतु उसे शेड के अंदर ही संपन्न किया जाता है एवं स्थान पर ही निर्देश दिये गये कि भाविष्य में उक्त कार्य शेड के अंदर ही किया जावे जिससे कि उत्पाद के अंत्यत महीनकण हवा के साथ उडे नहीं एवं वायु प्रदूषण की स्थिति निर्मित न हो। साथ ही कच्चे माल एवं उत्पाद का लोडिंग एवं अनलोडिंग कार्य शेड के अंदर ही संपन्न किया जावे। ट्रांसपोटेशन का कार्य भी

ढकी अवस्था में संपन्न करायी जानें हेतु निर्देश दिये गए। जल का उपयोग उद्योग में किसी प्रोसेस में नहीं होता है। बारिश में उत्पाद अथवा कच्चे माल पर पानी गिरने से रनऑफ के माध्यम से नाले में प्रदूषण होने की संभावना है। किंतु उद्योग द्वारा कच्चा माल शेड के अंदर एवं उत्पाद बोरो में भरकर व्यवस्थित रूप से रखे होने से उक्त परिस्थिति उत्पन्न नहीं हो रही है। निरीक्षण के दौरान इस बाबत भी निर्देश दिये गए कि इस कारण जल के प्रदूषण की परिस्थिति उत्पन्न ना हो पाये।

उद्योग से समस्या :-

1. उद्योग बोन से क्रश बोन का निर्माण करता है कभी-कभी गिली हड्डी होने से दुर्गंध होने की समस्या होती है।
2. उद्योग द्वारा कवर्ड शेड बनाया गया है तथापि दुर्गंध की समस्या रहती है।

अनुशंसा :-

1. उद्योग पूरी तरह से सूखी हड्डी का उपयोग करेगा।
2. शिकायकर्ता की ओर पूर्ण तरह से शेड को ढकेगा।
3. उत्पाद को खुले में स्टोर नहीं करेगा तथा निर्माण पश्चात बैग में भरकर शेड में स्टोर करेगा।
4. सात दिन से अधिक का कच्चे माल का तथा उत्पाद का भंडारण नहीं करेगा।
5. किसी भी स्थिति में गिली हड्डी का उपयोग नहीं करेगा यदि भविष्य में इकाई द्वारा गिली हड्डी का उपयोग करना पाया गया तो उद्योग को बंद करने की कार्यवाही की जाएगी।
6. वर्तमान में दुर्गंध का कारण नमी है यह समस्या बरसात में रहती है।

A perusal of the above goes to show that during the inspection the premise was virtually found in order. However, the recommendations that have been made we find are relevant and need to be complied with by the Respondent No. 1.

We direct that the recommendations made above be complied with and priority should be given however to cover the plot area which is said to be 20,000 sq. ft. At present about 6000 sq. ft. is the covered area the remaining 14000 is uncovered. We direct that during the year 2017-2018 that is up to 30.06.2018 an area of 6000 sq. ft. shall be covered and in the year 01.07.2018 to 30.06.2019 remaining 6000 sq. ft. shall be covered. They should take care of the issue with regard to the dust from the bones as a result of crushing as well as the rain water being polluted

as a result of falling on the open ground and polluting the area around it. The open area of 2000 sq. ft. shall be left in consultation with the MPPCB officers for tree plantation and digging trenches to stop the rain water from flowing rain water out of the premises.

Along the parameter the open space shall be left for creating green belt to function as wind breakers. The plantation work shall be carried out within 15 days from today. The trees that are selected should be of at least 5 ft. height capable of surviving in the condition prevailing in the area. At the same time efforts shall be made to undertake water harvesting measures so that no amount of rain or storm water is allowed to enter outside premises. This water so collected as a result of water harvesting system can safely be utilised for the irrigation and watering of the trees.

In addition to the above, since the issue with regard to foul smell has been identified to be caused on account of wet bones being brought in to the premise of the Respondent No. 1 without proper drying. It is hereby directed that the Respondent No. 1 at the collection point shall keep the bones for a minimum of 30 days since it is given out that a period of 15 to 20 days is required for bones to dry. Separate piles be maintained at the locations and no bones which are not fully dried and had been at the location for less than 30 days shall be brought within the premises for being crushed. This arrangement shall also be inspected by the MPPCB at the location which will be identified and registered with the MPPCB.

For the aforesaid purpose the MPPCB shall carry out surprise inspection without notice to the Respondent No. 1.

With the above directions this O.A. 69/2017 along with M.A. No. 315/2017 is disposed of.”

3. In light of the above order, Madhya Pradesh Pollution Control Board (MPPCB), Bhopal conducted the inspection and issued closure direction under Section 31 (a) of Air (Prevention & Control of Pollution) Act, 1981 vide letter dated 13.10.2017 and Appellant

immediately responded on 16.10.2017 with detailed reply with the request to again inspect the industry before taking any decision. Learned Counsel appearing for the Appellant has submitted that the Appellant has complied the conditions as directed by the MPPCB inspite of all that facts and compliance, the MPPCB issued notice with direction in para 7 of the notice that industry should be shifted to any other place within a period of 18 months whereas, the lease granted in favour of the Appellant's industry is valid for 30 years. It is alleged and argued that directions regarding shifting of the unit from the place of operation are illegal, arbitrary and ultra vires. Aggrieved by the order and the notice dated 06.02.2019, the Appellant approached the Appellate Authority, Housing & Environment, State of Madhya Pradesh but Appellate Authority without going into the facts as well as appreciating the submissions of the Appellant dismissed the appeal vide order dated 15.11.2019 and thus the appeal.

4. Learned Counsel appearing for the MPPCB has argued that :

- i. That, the appellant is a bone crushing unit operational in industrial area, Pipalkhiriya, District Raisen, since 2013. The answering respondent granted the Consent to Establish to the said unit on 21.11.2012 and the Consent to Operate was granted on 31.05.2013 with conditions to install and operate adequate pollution control measures to keep the pollution under control. The Consent to Operate was renewed from time to time. The latest renewal was granted on 13.01.2017 and was valid upto 31.12.2019 with a specific condition to use only dry bones as raw material and keep the product in covered shed having concrete floor.
- ii. However, a complaint was filed against the appellant unit before the Hon'ble National Green Tribunal, Central Zonal Bench, Bhopal vide OA No. 69/2017 *Abdul Latif Khan vs M/s Umar Enterprises and ors* regarding the problems of foul smell and others being

faced by the residents. The Hon'ble Tribunal decided the matter vide its order dated 30.08.2017 directing the appellant to carry out the compliances.

- iii. That, vide letter dated 27.09.2017, the appellant was directed to submit an action plan within 15 days regarding compliance of the directions issued by the Hon'ble Tribunal on 30.08.2017. The copy of letter dated 27.09.2017 is enclosed as Annexure R-02. However, no reply was received from the appellant. Thereafter an inspection was carried out on 12.10.2017 and 13.10.2017 wherein it was found that in view of the continuous non-compliance and repeated public complaints of nearby industries and residents, the closure directions were issued by the MPPCB to stop the operations of the unit vide order dated 13.10.2017
- iv. The process of bone crushing adopted by appellant was very crude having no control over foul odour. The raw material itself has the odour that aggravates in monsoon. This was the main issue raised by the residents. Despite several chances given to appellant to resolve the odour problem, but they failed to control the same. Thereafter, the appellant filed the application for the revoke of closure directions on 24.12.2018, with proposal of shifting the industry at some other location within 18 months supported with a fixed deposit, NOC from Gram Panchayat and taking pollution control measures. Copy of application for the revoke of closure directions dated 24.12.2018 has been enclosed as Annexure R- 04. The copy of affidavit filed by appellant dated 18.01.2019 has been enclosed as Annexure R-05. It is pertinent to note that the period of 18 months from January 2019 has already completed in July 2020 and the consent to operate granted to the unit has also expired on 31.12.2019.
- v. Thereafter, the closure order dated 13.10.2017 was revoked by the MPPCB on 06.02.2019 granting conditional permission to the appellant to operate the unit and within 18 months shift the unit to another

suitable place in view of the problems being faced by the local residents of Rajeev Nagar, village Pipalkhiriya.”

5. It is further argued that all these facts and records were filed by the MPPCB before the Appellate Authority and vide order dated 15.11.2019, the appeal was rightly decided. It is further submitted that the latest inspection of the unit was carried out on 03.10.2020 and 02.11.2020. During the inspection the unit was not in operation however, it appears that the unit has operated illegally without the knowledge of MPPCB. The perusal of record and the reply submitted by the MPPCB reveals that the consent under Water (Prevention & Control) Act, 1974 and Air (Prevention & Control) Act, 1981, was issued on the following conditions :

1. The daily quantity of trade effluent at out fall of the unit shall not exceed 0.000 KL/day, and the daily quantity of sewage at out fall of the unit shall not exceed 0.6 KL/day.

2. Trade Effluent Treatment :-

The applicant shall provide comprehensive effluent treatment system as per the proposal submitted to the Board and maintain the same properly to achieve following standards.

pH	Between	5.5-9.0	TDS	Not	2100
Suspended solids	Not exceed	100 mg/1.		exceed	mg/1
BOD 3 days 270C	Not exceed	30 mg/1.		Not	2100
COD	Not exceed	250 mg/1.		exceed	mg/1
Oil and grease	Not exceed	10 mg/1.			

For other parameters general standards of discharge as notified under EP Act 1986 shall be applicable.

3. Sewage Treatment :

The Applicant shall provide comprehensive sewage treatment system as per the proposal submitted to the

Board and maintain the same properly to achieve following standards.

pH	Between	5.5-9.0
Suspended solids	Not exceed	10 mg/1.
BOD 3 days 270C	Not exceed	10 mg/1.
COD	Not exceed	250 mg/1.
Oil and grease	Not exceed	10 mg/1.

Sr.	Water Code	(Qty. in klpd- Kilo Ltr. Per day)	WC : 100	WWG: 0.6	Water Source
1	Domestic Purpose		1.00	0.6	Tankers

4. The effluent shall be treated up to prescribed standards and reuse in the process, for cooling and for green belt development/gardening within premises. Hence zero discharge condition shall be practiced. In no case treated effluent shall be discharged outside of industry/unit premises.
5. Water meter preferably electromagnetic/ultrasonic type with digital flow recording facilities shall be installed separately for category wise consumption of water as per Water (Prevention and Control of Pollution) Cess Act 1977 for Industrial Cooling/boiler fee, mine spray, process & domestic purposes and data shall be submitted online through XGN monthly patrak/statements. The industry/unit shall also monitor the treated wastewater flow and report the same online through monthly patrak/statement.
6. Any change in production capacity, process, raw material used etc. and for any enhancement of the above prior permission of the Board shall be obtained. All authorized discharges shall be consistent with terms and conditions of this consent. Facility expansions, production increases or process modifications which result new or increased discharges of pollutants must be reported by submission

of a fresh consent application for prior permission of the Board.

7. All treatment/control facilities/system installed or used by the Applicant shall be regularly maintained in good working order and operate effectively/efficiently to achieve compliance of the terms and conditions of this consent.
8. The specific effluent limitations and pollution control systems applicable to the discharge permitted herein are set forth as above conditions.
9. Compilation of Monitoring –
 - i. Samples and measurements taken to meet the monitoring requirements specified above shall be representative of the volume and nature of monitored discharge.
 - ii. Following promulgation of guidelines establishing test procedure for the analysis of pollutants, all sampling and analytical methods used to meet the monitoring requirements specified above shall conform to such guidelines unless otherwise specified sampling and analytical methods shall conform to the latest edition of the Indian Standard specifications and where it is not specified the guidelines as per standard methods for the examination of Water and Waste latest edition of the American Public Health Association, New York U.S.A. shall be used.
 - iii. The Applicant shall take samples and measurement to meet the monthly requirements specified above and report online through XGN the same to the Board.
6. After the directions passed by the Tribunal in O.A. No. 69/2017, the MPPCB issued a notice dated 27.09.2017 directing to submit action plan in compliance of the order.
7. The Appellant had further submitted an affidavit before the MPPCB with the prayer that the Appellant should be given the time of atleast 18 months for shifting his industry from that area. Accordingly, on the request of the Appellant, MPPCB after accepting

the affidavit and prayer submitted by the Appellant put a condition in the notice for shifting the unit. The condition in the order dated 06.02.2019 at sl. No. 7 was put in the notice, on the request of the Appellant and consent order was issued on the basis of the affidavit submitted by the appellant. The members of the MPPCB again inspected the unit again on 03.10.2020 and 02.11.2020 and it was found as follows :

INSPECTION REPORT

Name of the Unit : M/s Umar Enterprises, IA
Pipalkhiriya, District Raisen

Date of Inspection : 03.10.2020 & 02.11.2020

Purpose of Inspection : Regarding status

Obstruction During Inspection

1. Unit was not found in operation during inspection on both days. But the condition within working shed found that crushed bones heap was there & crushed material scattered on floor and screen pan reflected that unit would have been in operation.
2. Raw bones storage was very little inside factory shed on dated 03.10.2020 but on 02.11.2020 more quantity of raw bones were seen in storage shed.
3. Putrefied smell was experienced in vicinity of unit.
4. Crows & other bird seen inside factory shed.
5. Owner of the unit Mr. Mohammad Yusuf Qureshi was not present at factory site. Only factory operator present. No worker was at factory. Factory owner was informed about inspection telephonically at the time undersign reached for inspection at site.

Other Relevant Information

1. Consent of the unit is already expired on 31.12.2019.
2. No consent renewal is granted by Board for further period.

3. As per Hon'ble NGT order dated 30.08.2017 in case O.A. No. 69/2017 following non compliance were observed :
- Remaining 6000 Square feet area which had to be covered by shed up to 30.06.2019 was not covered till inspection date nor any work regarding this was seen at site.
 - Plantation in 2000 Square feet open area was instructed by Hon'ble NGT. But only 10 plants were seen at site.
 - Unit not informed to Board about location of bone collection area for drying wet bones before carrying to factory site.
4. This unit is responsible for generating putrefied smell due to handling and use of un-dried bones for crushing. Population is residing at about 100 m from the unit. On instruction of Collector Raisen a public hearing about the problem was held on 02.1.2019 at Pipalkiriya. Residents of Rajiv Nagar near factory were unanimously submitted their complaints against the foul smell generated from factory premises
5. The Applicant M/s Umer Enterprises filed an appeal in Hon'ble NGT bearing No. 17/2019 (CZ) against Appellate Authority order dated 13.11.2019.

Conclusion :

This inspection cum status report is prepared in compliance to Hon'ble NGT (CZ) order dated 16.09.2020. Copy of report submitted by Board to Appellate Authority & minutes of public hearing are enclosed herewith for reference. On inspection foul smell problem is still experienced. Unit is operating without valid consent of the Board. Photographs taken during inspection are also enclosed.

8. The Appellant has submitted that on the request of the Respondent, he had submitted a fixed deposit of Rs. 1,00,000/- (Rupees One Lakh) to MPPCB for operation of the unit with a condition to shift it within 18 months and further on the advice given by the MPPCB official, the Appellant issued a letter replacing the fixed deposit with

a Bank Guarantee and further undertaking that the Appellant shall carry out the second phase work and shift its industry within 18 months thereafter. The affidavit submitted by the Appellant has been filed by the MPPCB and it is nowhere mentioned that the affidavit was submitted on advice of the MPPCB, further MPPCB is not meant to submit the advice to the Appellant. We have also gone through the order dated 15.11.2019 passed by the Environmental Department, Govt. of Madhya Pradesh on the appeal filed by the Appellant and in the order impugned the facts as narrated by the Appellant have been discussed in light of the reply submitted by the MPPCB and the Appellant was given an opportunity of hearing, the points as raised by the Learned Counsel for the Appellant had been raised before the Appellate Authority and every points which has been raised, have been discussed and decided. There is no irregularity or illegality in the order impugned.

9. Section 3 of the Environment (Protection) Act, 1986 empowers the Central Government to take all such measures for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. One of the measures provided in Section 3 (2) (v) is restriction of areas in which any industries, operations or processes or class of industries shall not be carried out or shall be carried out subject to certain safeguards. The Environment (Protection) Rules, 1986 were made in exercise of power conferred by Sections 6 and 25 of the Environment (Protection) Act, 1986. According to Rule 5, the Central Government may prohibit or restrict the location of industries and the carrying on of processes and operations in different areas. In exercise of the power conferred on the Central Government by Sub-Clause (i) and Clause (v) of Sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986 read with

Clause (b) of Sub rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Ministry of Environment and Forests, Government of India issued a Notification on 14.09.2006 directing construction of new projects or activities or the expansion or modernization of existing projects or activities listed under the Schedule to the Notification shall be undertaken only after prior environmental clearance from the Central Government or the State Level Environment Impact Assessment Authority.

10. While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment [Indian council for enviro-legal action v union of India [1996]5scc 281]. The traditional concept that development and ecology are opposed to each other is no longer acceptable [Vellore citizens welfare forum v. union of India [1996]5scc 647].
11. In a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the rule of law provides the cornerstone. The rule of law is to be distinguished from rule by the law. The former comprehends the setting up of a legal regime with clearly defined rules and principles of even application, a regime of law which maintains the fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is capable of exacting compliance. Rule by the law on the other hand can mean rule by a despotic law.

It is to maintain the just quality of the law and its observance of reason that rule of law precepts in constitutional democracies rest on constitutional foundations. A rule of law framework encompasses rules of law but it does much more than that. It embodies matters of substance and process. It dwells on the institutions which provide the arc of governance. By focusing on the structural norms which guide institutional decision making, rule of law frameworks recognize the vital role played by institutions and the serious consequences of leaving undefined the norms and processes by which they are constituted, composed and governed. A modern rule of law framework is hence comprehensive in its sweep and ambit. It recognizes that liberty and equality are the focal point of a just system of governance and without which human dignity can be subverted by administrative discretion and absolute power. Rule of law then dwells beyond a compendium which sanctifies rules of law. Its elements comprise of substantive principles, processual guarantees and institutional safeguards that are designed to ensure responsive, accountable and sensitive governance.

12. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools – conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges – of how they have been shaped by humanity’s interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity’s actions have

charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts. There are significant linkages between concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others. It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, state and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire eco-system. The environmental rule of law attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to

formulate principles which must become the building pillars of environmental regulation in the present and future. The environmental rule of law recognizes the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance – of the value in giving a voice to those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.

13. In its decision in *Hanuman Laxman Aroskar vs Union of India*, [2019] 15 SCC 401 the Court, recognized the importance of protecting the environmental rule of law. The court observed:

“142. Fundamental to the outcome of this case is a quest for environmental governance within a rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our ecosystem.

“143. Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement — both in developed and developing countries alike ...

“156. The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative

duty of fair treatment under Article 14 of the Constitution.”

49. In its first global report on environmental rule of law in January 2019, the United Nations Environment Programme (“UNEP”) has presciently stated:

“If human society is to stay within the bounds of critical ecological thresholds, it is imperative that environmental laws are widely understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and the planet. Environmental rule of law offers a framework for addressing the gap between environmental laws on the books and in practice and is key to achieving the Sustainable Development Goals.

Successful implementation of environmental law depends on the ability to quickly and efficiently resolve environmental disputes and punish environmental violations. Providing environmental adjudicators and enforcers with the tools that allow them to respond to environmental matters flexibly, transparently, and meaningfully is a critical building block of environmental rule of law.”

50. The need to adjudicate disputes over environmental harm within a rule of law framework is rooted in a principled commitment to ensure fidelity to the legal framework regulating environmental protection in a manner that transcends a case-by-case adjudication. Before this mode of analysis gained

acceptance, we faced a situation in which, despite the existence of environmental legislation on the statute books, there was an absence of a set of overarching judicially recognized principles that could inform environmental adjudication in a manner that was stable, certain and predictable. In an article in the *Asia-Pacific Journal of Environmental Law* (2014), Bruce Parry describes this conundrum in the following terms:

“Environmental regulations and standards typically identify specific limits or prohibitions on detrimental activities or substances. They are created to reflect the principles and prohibitions contained in the statute under which they are promulgated. However, where the contents of the statute are themselves indeterminate, there is no concrete rule or set of criteria to apply to formulate the standards. Their development can therefore be highly political and potentially arbitrary.

Instead of serving to protect citizens' environmental welfare, an indeterminate environmental law facilitates a utilitarian calculus that allows diffuse interests to be placed aside when they are judged to be less valuable than competing considerations.”

14. However, even while using the framework of an environmental rule of law, the difficulty we face is this – when adjudicating bodies are called on to adjudicate on environmental infractions, the precise harm that has taken place is often not susceptible to concrete quantification. While the framework provides valuable guidance in

relation to the principles to be kept in mind while adjudicating upon environmental disputes, it does not provide clear pathways to determine the harm caused in multifarious factual situations that fall for judicial consideration. The determination of such harm requires access to scientific data which is often times difficult to come by in individual situations.

15. In an article in the *Georgetown Environmental Law Review* (2020), Arnold Kreilhuber and Angela Kariuki explain the manner in which the environmental rule of law seeks to resolve this imbroglio:

“One of the main distinctions between environmental rule of law and other areas of law is the need to make decisions to protect human health and the environment in the face of uncertainty and data gaps. Instead of being paralyzed into inaction, careful documentation of the state of knowledge and uncertainties allows the regulated community, stakeholders, and other institutions to more fully understand why certain decisions were made.”

The point, therefore, is simply this – the environmental rule of law calls on us, as judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law.

16. In a recent decision of the Court in *Bengaluru Development Authority vs Sudhakar Hegde* 2020 scc online sc 328, the Hon'ble Supreme Court held:

“107. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth...

“108. Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the state and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public spirited individuals are called to invalidate such actions...

“109. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and

representative decision making.

Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.”

17. In *Lal Bahadur vs State of Uttar Pradesh* [2018]15 scc 407 , the Court underscored the principles that are the cornerstone of our environmental jurisprudence, as emerging from a settled line of precedent: the precautionary principle, the polluter pays principle and sustainable development. This Court further noted the importance of judicial intervention for ensuring environmental protection. In a recent decision in *State of Meghalaya & others vs All Dimasa Students Union*,[2019] 8 SCC177 this Court reiterated the key principles of environmental jurisprudence in India, while awarding costs of Rs. 100 crores on the State of Meghalaya for engaging in illegal coal mining.

The UNEP report (supra) also goes on to note:

“Courts and tribunals must be able to grant meaningful legal remedies in order to resolve disputes and enforce environmental laws. As

shown in Figure 5.12, legal remedies are the actions, such as fines, jail time, and injunctions, that courts and tribunals are empowered to order. For environmental laws to have their desired effect and for there to be adequate incentives for compliance with environmental laws, the remedies must both redress the past environmental harm and deter future harm.”

The above discussion puts into perspective our decision in the present appeals, through which we shall confirm the directions given by the NGT in its impugned judgment. The role of courts and tribunals cannot be overstated in ensuring that the ‘shield’ of the “rule of law” can be used as a facilitative instrument in ensuring compliance with environmental regulations.

18. **In Goel Ganga Developers India Pvt. Ltd. vs Union of India** [2018] 18 SCC 257, the Court dealt with a situation in which the project proponent had engaged in construction that was contrary to the environmental clearance granted to it. Coming down on the project proponent, a two-judge bench, held as follows:

“64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and

manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more.”

19. The Court in **State of M.P. vs Centre for Environment Protection Research & Development**, [2020] 9 SCC 781 held as follows: “

“41. The Tribunal constituted under the NGT Act has jurisdiction under Section 14 of the said Act to decide all civil cases where any substantial question relating to environment including enforcement of any right relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I to the said Act, which includes the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

“42. In view of the definition of “substantial question relating to environment” in Section 2(1)(m) of the NGT Act, the learned Tribunal can examine and decide the question of violation of any specific statutory environmental obligation, which affects or is likely to affect a group of individuals, or the community at large.

“43. For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments.

“44. Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I.”

20. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship”.

This indicates that while applying the concept of “sustainable development” one has to keep in mind the “principle of proportionality” based on the concept of balance. It is an exercise in which we have to balance the priorities of development on one hand and environmental protection on the other hand.

21. Learned Counsel appearing for the Appellant has submitted that it is not purpose of the Environmental Laws or Rules to close the unit but to enforce the Environmental Rules. It is argued that the condition of Consent has been complied with, by the Appellant and thus MPPCB should be directed to issue the consent order under the Air (Prevention & Control) Act, 1981 and Water (Prevention & Control) Act, 1974. The appeal has been filed against the impugned order 15.11.2019, and with the condition no. 7 in the order dated 06.02.2019 and this Tribunal is concerned and confined to the prayer made by the Appellant. The issue of the consent order is within the domain of the State Government or the State Pollution Control Board under the Air Act & Water Act and this Tribunal cannot go beyond the jurisdiction to issue order to a Statutory Authority to function in a particular way. So far as order dated 15.11.2019 and the condition no. 7 of order dated 06.02.2019 is concerned, we have gone through the impugned order and found that the every point which has been raised presently before this Tribunal has already been raised before the Appellate Authority and the Appellate Authority has given due consideration of the points raised by the Appellant while discussing the impugned order and we found that there is no illegality and irregularity in the order impugned.
22. Accordingly Appeal is not maintainable and deserves to be dismissed, therefore, **Appeal No. 17/2019 (CZ) is dismissed.**

Appellant is at liberty to move an application before the Competent Authority and the authority may consider, according to law.

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

August 13th, 2021
Appeal No. 17/2019(CZ)
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