

Item No. 11

Court No. 1

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

Appeal No. 92/2019
(I.A. No. 679/2019)

M/S K.M. Sugar Mills Ltd. (Distillery Division)

Appellant(s)

Versus

Uttar Pradesh Pollution Control Board & Ors.

Respondent(s)

Date of hearing: 04.11.2019

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
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Respondent(s): Mr. Prithvi Srivastavi, appellant in person

ORDER

1. This appeal has been preferred against order dated 04.10.2019 passed by the UPPCB directing closing of distillery unit of K.M. Sugar Mills Ltd. at Ayodhya and revoking the sanction under the Water (Prevention and Control of Pollution) Act, 1974.
2. The appeal is offshoot of proceedings before this Tribunal in O.A No. 116/22014, *Meera Shukla v. Municipal Corporation Gorakhpur &Ors.* Background of the matter has been noticed in the order dated 27.09.2019 in the said matter as follows:

"2. The matter was considered vide the order dated 23.08.2018. The Tribunal noted the allegation that Ramgarh Lake, Ami River, Rapti River and Rohani River in and around District Gorakhpur were severely polluted on account of discharge of untreated sewage and industrial effluents. Steps required to prevent contamination of water bodies and groundwater were not being taken. This was affecting the farmers and inhabitants, flora, fauna and ecology of area and causing degradation of the environment. 103 water bodies are under threat. There was no proper management of solid waste and no designated scientific

sanitary landfill. There was encroachment of the Ramgarh Taal. CETP had not been set up. Industries were not complying with the environmental norms. There was high organic load in River Ami and Rapti and Sugar industries and Distillery units were causing pollution. 557 persons died in the year 2012. About 50,000 persons died in the last 30 years. It was also noted that Ami, Rapti and Rohani River are the tributaries of Ghaghara which ultimately terminated into River Ganga. For public health at Gorakhpur, clean water supply was necessary, apart from cleaning of water bodies and other steps for protection of environment.

3. The Tribunal issued directions for the purpose and a Monitoring Committee was constituted headed by former Judge of Allahabad High Court with representatives of the CPCB, UPPCB and State Jal Nigam to oversee compliance of directions of this Tribunal already issued on the subject of closing the sources of contaminated water (like hand pumps) and taking steps for supply of potable water, to ensure proper waste management and deal with other issues mentioned above.
4. The Committee was to carry out inspection of the industries causing pollution of water bodies, drains and rivers in the area and ETPs, STPs, CETP and SWM sites. Action plan was required to be prepared for solid waste processing plant, proper functioning of ETPs and CETP and also for making available potable water to the inhabitants apart from undertaking rehabilitation program for compensating the victims who had suffered. The Committee was to furnish reports to this Tribunal for further action.
5. The matter has been dealt with on several dates since then in the light of reports received from the Committee. The Tribunal has passed directions with regard to installation of STPs and CETP by GIDA, closure of industries operating illegally, adding to the pollution of the Rivers or their tributaries, shifting of construction activities from the floodplain zones/catchment area, unscientific disposal of municipal and other wastes. Reports have been dealt with from time to time earlier vide orders dated 25.10.2018, 17.12.2018, 07.03.2019, 29.04.2019 and 19.07.2019 to which a brief reference may be made.
10. Finally, vide order dated 19.07.2019, reports with regard to pollution by K.M Sugar Mills, and Malvika Cement Private Limited and also pollution of River Gomti and Ramgarh Lake were considered. The reports were directed to be furnished to the CPCB and UPPCB for further action. Report on the issue of illegal construction in catchment area of Ramgarh Lake was directed to be

dealt with by Urban Development Department of UP. The pollution of River Gomti, reported by the Committee, in pursuance of a separate order of the Tribunal in O.A 24/2018, was to be dealt with by the Chief Secretary, UP. The Chief Secretary was directed to file an action taken report for consideration in the matter of pollution of river stretches, i.e O.A. No. 673/2018. This aspect has to be considered in the said matter. The Urban Development Department was to file action taken report with regard to construction by GDA in catchment area of Ramgarh Lake which is still awaited. Review petition has been filed by GDA seeking liberty to place its view point before the Urban Development Department.

B. Report filed by UPPCB dated 13.09.2019 (Pp 2535-2567) in respect of M/s K.M. Sugar Mills (Distillery & Sugar Unit), Masaudha, Ayodhya.

19. The Distillery and Sugar units of the industry have been found to be non-compliant. In view of the facts found, the units need to be immediately closed by the SPCB under Section 31(1)(c) of the Water (Prevention and Control of Pollution) Act, 1974 in accordance with law in view of the recommendations of the joint Committee.”

6. The matter was earlier considered vide order dated 19.07.2019 in the same matter as follows:

“4. We proceed to consider the above reports seriatim.

(i) **11.05.2019 with regard to M/s K M Sugar Mills Limited (Distillery Division) and M/s K M Sugar Mills Limited (Sugar Division), Faizabad and additional report dated 08.07.2019 with regard to the Sugar Division:** It is reported that though the unit is ZLD, it was found discharging effluents bypassing the ETP in Masoda drain meeting River Tamsa. The water was polluted and rendered unfit for human consumption resulting in various diseases. The Committee recommended that compensation of ₹ 5 crore be recovered for welfare of the effected inhabitants in the villages. The units be required to provide potable water to the inhabitants. The effluent discharge should be stopped. The findings and the recommendation of the Committee are as follows:

“Findings

1. Thus, the following facts are proved beyond doubt from the report of the inspecting team (supra):
2. Distillery unit discharges effluent in Masoda drain, bypassing the incineration/evaporation to save the electricity, which ultimately meets river Toms (Tamsa).

3. *The Mill and its distillery units are polluting the ground water on account of discharge and storage of polluted water in the vicinity since decades.*
4. *The test report of water shows that it is not fit for human consumption and is causing variety of diseases like cancer, asthma etc.*
5. *At least the villages residing in three villages Masoda Khanpur, Itaura and Alawalpur have no other sources of potable water except the ground water which is polluted on account of industrial effluent (supra) of K.M. Sugar Mill.*
6. *The consent given by UPPCB to M/s K. M Sugar Mill (distillery and sugar unit) is for ZLD (zero liquid discharge) which at the face of the record has been deliberately violated in spite of closure and opening of unit several times.*

Proposal and Recommendation. *In view of above, we propose and recommend as under:*

1. *The Mill be saddled with exemplary compensation of rupees five crores which may be used for the welfare of the villages Masoda, Khanpur, Alawalpur and Itaura and other villages adjoining to river Tamsa in the vicinity of Tehsil Sadar District Ayodhya to save them from diseases caused due to pollution from industrial unit and provide potable water under the supervision of District Magistrate Ayodhya with overall supervision by Principal Secretary Urban Development.*
2. *The Industrial unit should establish two overhead tanks for potable water in villages Masoda, Khanpur, Alawalpur, and Itaura on the basis of project report prepared by the UP-Jal Nigam and expenses (rupees 226.77lacs and rupees 199.59 lacs respectively with escalation cost) on the said overhead tanks and their maintenance be borne by M/S K.M Sugar Mills, Distillery and Sugar unit equally under the supervision of District Magistrate Ayodhya.*
3. *Since the Mill has been consented by UPPCB to operate on zero discharge the district authorities from their own agencies on the expenses incurred by the industrial unit should construct a concrete wall expeditiously, say within a period of one month to stop the flow of industrial effluent/ sewage in Masoda drain.*
4. *In the absence of STP, the sewage appears to discharge in drains, from where it goes into the Tamsa River and thereafter in Ghagra causing serious environmental hazards to the people of the locality. Let both the industrial units install STP within a period of one year with due communication to the Monitoring Committee, CPCB and UPPCB. Both the units must start work within a period of three months.*
5. *Separate electricity connection for incineration, STP and ETP be provided by the industry (supra) within a month.*
6. *The recommendations made by the inspection team (supra) is accepted and the instruction be complied with*

by the industrial unit within three months, failing which not only by the distillery units but the sugar unit be also closed.

7. The compliance to be made by the mill shall be verified by the Joint team of Scientists of CPCB and UPPCB immediately after three months from the date of order passed by NGT and report be forwarded to Eastern UP Rivers and Water Reservoir Monitoring Committee/NGT.”

The additional report dated 08.07.2019 brings to light that inspite of above report the Sugar Division continued to discharge as found in later inspection. In the said report, the findings and recommendations are as under:

14. “In view of above and from material on record we sum up our finding as under:

- (i) M/s K.M Sugar Mills Ltd. disposing the treated effluent on their own irrigation land (25 acre) through the underground H.D.P.E pipeline. This pipeline is passing below the railway line and from the cultivable land of the farmers.
- (ii) The farmers/villagers have complained that without their consent M/s K.M Sugar Mill Ltd. have taken underground pipeline to dispose of the treated industrial effluent at their own agricultural land.
- (iii) The treated industrial effluent discharge on agricultural land (Location I) is found non-complying w.r.t notified discharge standards. The concentration of suspended solids was found 1.12 times higher than the standards. And treated industrial effluent discharge on agricultural land (Location II) is found non complying w.r.t notified discharge standards. The concentration of BOD was found 1.37 times higher than the notified standards, whereas concentration of COD was found 1.672 times higher.
- (iv) As per the analysis result of ground water sample, the concentration of Magnesium is found more than the acceptable limit of IS:10500.

Thus, bases on the above observations, directions may be issued under Section 05 of Environment (Protection) Act, 1986 to sugar unit and suitable environmental compensation may be charged for each non-complying day.

15. **Assessment of Environment Compensation:** Accordingly, the sugar unit has been discharging treated effluent that does not meet the discharge standards on their agricultural land of 25 acres (supra) and the land of farmers/villagers since the date of operation. Thus, for polluting industries the scale of compensation we assess at ₹ 10,000 per day for the last three years, thus making the environment

compensation is ₹One crore eighty-two lakhs sixty thousand.

14. Proposal/Recommendation: In view of above, we propose and recommend as under:

- 1) The Mill be saddled with environment compensation of ₹ 1,09,50,000 (One crore nine lakhs and fifty thousand) which may be used for the welfare of the villagers of Mahawa, Ayodhya to save them from diseases caused due to pollution from the industrial unit and provide potable water under the supervision of District Magistrate Ayodhya with overall supervision by Principal Secretary Urban Development.
- 2) The Mill within a period of two months shall remove all treated/untreated industrial effluent discharged and stored in agricultural land by passing through the pipeline under the railway line, private and agricultural land.
- 3) The Mill shall not operate the H.D.P.E pipeline passing below the railway line and from the cultivable land of the farmers without taking due consent from the DRM Railways and the Gram Sabha of village Mahawa as well as private tenure holder.
- 4) Since the Mill has been consented by the UPPCB to operate on zero discharge, the district authorities from their own agencies on the expenses incurred by the industrial unit should stop the flow of effluent on agricultural land which is likely to pollute underground water and adjoining agricultural land through seepage.
- 5) The compliance to be made by the Mill shall be verified by the joint team of scientists of CPCB and UPPCB immediately after three months from the date of order passed by NGT and report be forwarded to Eastern UP Rivers and Water Reservoirs Monitoring Committee/NGT.
- 6) Any ordered or orders as the Hon'ble NGT pleases may be passed."

In the light of earlier approach adopted by this Tribunal with regard to action on such reports¹ we direct that the copies of the said reports be furnished to the CPCB and UPPCB for further appropriate action of prohibiting polluting activity, recovering compensation for the damage and prosecution. The said joint Committee may furnish an action taken report in the matter within one month by email at judicial-ngt@gov.in. The state PCB will be the nodal agency for coordination and compliance."

7. In pursuance of the above, a joint Committee of the CPCB and the UPPCB carried out inspection on 05.08.2019 and gave report dated 19.08.2019 as follows:

“2. The distillery unit may not be allowed by UPPCB to operate till compliance of following:

- a. The unit should immediately close bypass drains. Integrate all effluent streams and subject them for suitable treatment in ETP.
- b. The distillery unit should expedite to install CPU as suggested by NSI, Kanpur for treatment of other process effluent.
- c. The unit should expedite to install Sewage Treatment Plant (STP) for sugar and distillery. Treated sewage should be reused for gardening/irrigation purpose.
- d. The distillery unit should immediately close drain carrying treated/untreated/partially treated effluent to Masoda drain. No effluent should be discharged into the Masoda drain.
- e. The distillery unit should not dispose coloured/untreated effluent on land.
- f. The distillery unit should restrict the spent wash storage capacity as per CPCB direction. Remaining lagoon should be dismantled.
- g. The unit should strictly comply with the consent conditions in totality.”

8. It was after considering the above report that order dated 27.09.2019 was passed. The impugned order is follow up of the said order.

9. There is no basis to dispute the objective findings in inspection reports mentioned earlier, including the latest report of inspection conducted by the CPCB and the State PCB on 05.08.2019 making out a case justifying the impugned order. The statement in the memo of appeal is that the appellant has almost ‘fully complied’ with the directions and a compliant unit should not be subjected to closure.

10. Thus, we are unable to accept the plea that the appellant is a compliant unit. The appeal is dismissed.

11. This order will not debar the appellant from taking remedial steps on which it will be open to the joint Committee to conduct further inspection by permitting running of the unit on trial basis to check the compliance. If the unit is found compliant, the State PCB may consider the matter further in accordance with law.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

Saibal Dasgupta, EM

November 04, 2019
Appeal No. 92/2019
(I.A. No. 679/2019)
AK

