

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION**

PUBLIC INTEREST LITIGATION NO.17 OF 2011

Nicholas H. Almeida

..Petitioner

Versus

State of Maharashtra & Ors.

....Respondents.

Mr. G.R. Joshi with Mr. Vishal Kanade and Kaushika Muthukumar i/b. RMG Law Associates for the petitioner.

Mr. J.S. Saluja, AGP for respondent No.1.

Mr. Prashant Chavan with Shyamali Gadre i/b. Little & Co., for respondent No.2.

Mr. Nitin Deshpande with Ms. Rachana Chavan for respondent No.3.

Dr. Sadhana Mahashabde with Reshma Nair, Jasmin Shah, Sunita Pendharkar for Respondent No.13 RIA Roha CETP and for respondent No.6, 9, 10 and 12.

Dr. Birendra Saraf with Mr. J.P.Sen, Mr. Rohan Sawant, Mr. Jai Chhabria and Mr. Vineet Unnikrishnan i/b. Federal Rashmikant for respondent No.8.

Mr. S.B. Deshmukh for Applicant in N.M. 1 of 2013.

Dr. Sharma with Mrs. Madhubala Kajle for respondent No.4.

CORAM : MOHIT S. SHAH, C.J.. &

ANOOP V. MOHTA, J.

DATE : 03 January 2013

P.C.

Mr. Nitin Deshpande, learned counsel for Maharashtra Pollution Control Board (MPCB) has invited our attention to the affidavit dated 27 December 2012 pointing out the improvement in

performance of the Mahad Manufacturers Association, CEPT in the following terms:-

“After going through the results on monitoring for last 8 years, it can be seen that the inlet & outlet COD was much, much on higher side initially in the year, 2005 at the maximum range of 7,360 mg./ltr. for inlet and in the maximum range of 7,320 mg/ltr. for outlet, with continuous follow up and because of various orders passed by this Hon'ble Court being implemented strictly, after 2011, the inlet COD has been brought to the 814 mg/ltr., which is within the designed capacity of the CEPT & outlet COD has been brought to 356 mg/ltr., of the outlet standards for which, the standards for which, the standards prescribed in the consent/EPA Standards is 250 mg./ltr. There has been considerable improvement in the performance of the MMA CEPT on account of continuous monitoring done by the Respondent-Board, to secure the compliance of various directions issued by the Respondent-Board from time time time”.

2. Though MPCB has given the readings of COD and BOD as average of the month, henceforth MPCB as well as MMA CEPT shall also indicate the highest readings of COD, BOD and P.H. level in each particular month over and above giving the average.

3. Dr. Mahashabde, learned counsel for Mahad Manufacturers' Association has placed on record the readings for the month of December 2012 which shows that the BOD level has remained around 100 and COD level has remained around 305 to 315. However, the readings taken by the M.P.C.B., also show that the treated effluent released from CETP Mahad had the following readings for the month of December 2012; pH 7.17, B.O.D. 127, C.O.D. 318 and SS 130 as against the permissible levels of 5.5 – 9, 100, 250 and 100 respectively. The Mahad Manufacturers' Association CETP shall

continue to improve their performance so as to bring the treated effluent within the permissible limits indicated above.

4. Mr. Nitin Deshpande has also invited our attention to the fact that MPCB has taken action against two defaulting units namely M/s.Sudarshan Chemicals with reference to the disposal of the sub-standard effluent to CETP and M/s. Astech Life Sciences Ltd., has been identified as defaulting industry for the discharge of untreated effluent outside the factory premises. It is stated that after calling for their reply/objections, MPCB decided to forfeit the bank guarantee of Rs.2.5 lakh and Rs.5 lakhs respectively by interim directions dated 4 December, 2012.

5. In response to a specific query from the Court, Mr.Deshpande, learned counsel for MPCB states that further action will be taken against the above units if they do not show improvement. However, after forfeiture of the bank guarantees as stated above, there has been improvement.

The Member Secretary of MPCB shall, within two weeks from today, filed an affidavit indicating performance of these units after forfeiture of the bank guarantees.

6. The case of M/s.Astech Life Sciences Ltd. appears to be more serious as it was found to be discharging untreated effluent outside the factory premises, therefore, would require further and constant vigil. M/s.Astech Life Sciences Ltd., shall, therefore, be joined as party respondent to this PIL to show cause why appropriate directions should

not be issued including direction for closure for discharging untreated effluent outside the factory premises without sending it into CEPT.

7. Dr. Mahashabde, learned counsel for the Mahad Manufacturers' Associate CETP states that 13 industrial units with high pollution potention have already set up the storage tanks with holding capacity for 24 hours discharge of effluent. It is stated that this has been done in order to see that before the effluent being discharged by these units is received by CETP, the CETP Society is in a position to take the necessary readings for the purpose of deciding whether or not to receive the effluent from these industries into the CETP. The learned counsel states that 22 other industries have also been called upon to set up such storage tanks as they are large/medium size industries manufacturing chemical products.

8. The President of the CETP, Mahad shall file an affidavit placing on record the particulars of such units which have already set up storage tanks and also the particulars of the units which are in the process of setting up such storage tanks. The chart to be produced along with the affidavit shall indicate the name of the industrial units, average water consumption per day, the quantity of effluent being discharged per day and the average readings for the months of November and December 2012. This shall be done within two weeks from today.

9. Mr. Deshpande, learned counsel for MPCB has also invited our attention to the directions being issued by the Regional Officer, MPCB to Mahad Manufacturers' Association CETP in respect

of the following:-

- “1. The Respondent Board has already directed MMA CETP to establish, operate and maintain website by providing it within 30 days time duly supported by the bank guarantee of Rs.2.5 lakhs.
2. To operate and maintain tertiary treatment units properly and periodically cleaning shall be carried out, so as to improve functional efficiency of the CETP.
3. To conduct treatability study for all units of CETP through a suitable Agency for improvement of scientific operation operation and maintenance of CETP.”

10. Dr. Mahashabde, the learned counsel for the Mahad Manufacturers' Association CETP states that direction No.1 will be complied with by 31 January 2013. It is further stated that periodical cleaning of the tertiary treatment units is also being carried out for improving the functional efficiency of the CETP. As regards the third direction i.e. conducting treatability study for all units of CETP through a suitable Agency for improvement of scientific operation and maintenance of CETP, the learned counsel states that the Mahad Manufacturers' Association will carry out the treatability study through a suitable agency and the agency will be identified within one month.

11. The affidavit on behalf of MPCB also refers to MIDC issues. It was decided that the Executive Engineer, MIDC, Mahad (Civil) will arrange meeting with NIO and MPCB to decide further line of action and to review the necessity of the extension of pipeline upto Ambet.

The learned counsel for the MMA CETP has placed on record the copy of the minutes of the meeting which the MMA representative had with the C.E.O., MIDC on 29 December 2012. The minutes are obviously prepared by the Mahad Manufacturers' Association and not by the MIDC. Point No.3 of the said minutes reads as under:-

“3) MIDC Treated Effluent Disposal Pipe Lines: The MMA president and members have explained about frequent problems of pipe line leakages and punctures due to poor maintenance. The MMA president has also explained about the recent pipe line leakage problems.

Especially it has explained about the recent major leakage occurred on the single line between Motvale and Ovale which is final discharge point in to Savitri creek caused to stand still of Industrial production for 3 days.

Further the members have made appeal to Honourable CEO that the treated effluent must be discharged at Ambeth as per NIO guidelines as against present discharge point at Ovale and also pleaded to erect the diffuser on war footing basis at present discharge point at Ovale.

The MMA members have stressed the need to replace the existing disposal pipe line by new pipes and also to lay parallel line with more carrying capacity from CETP to Ambeth to take care of future Industrial expansion and upcoming Industrial units' effluents expected around 20 MLD in the future.

Finally it is decided that the diffuser work at Ovale discharge point must be carried out on war footing basis and thereafter proposals shall be made for replacement of existing disposal pipe lines”.

12. It is clarified that the minutes are prepared by the Mahad Manufacturers' Association and the learned counsel for MIDC states that he has no instruction about the correctness or otherwise of these minutes. The learned counsel for the MIDC also states that the matter is being looked into by MIDC and MIDC will endeavour to take decision on the above issues as early as possible and preferably by 31 January 2013.

13. The learned counsel for the MMA CETP also invites our attention to Point No.2 in the above minutes which reads as follows:-

“2) Infrastructure Damage Charges: The MMA president and its members have submitted the formula which has been issued by the MIDC in the year 2006 as per directions of the Honourable High Court order dated 20.11.2012. The MMA president has also brought to Honourable CEO notice about previous representations through meetings being made in the past on the same subject. It is further requested to Honourable CEO to accept the formula vide circular 1/2006 dated 08.03.2006 which has been issued by the MIDC in the year 2006 instead of existing formula vide circular dated 18.05.2010 which is technically fault as well as financially not viable for survival of Industries.

The Honourable CEO has agreed and given assurance the members that the fresh circular shall be issued with immediate effect”.

14. We do not express any opinion on the above issue and it will be open to MIDC to take appropriate decision.

15. At the request of the learned counsel appearing for Mahad Manufacturers' Association and Roha Industrial Units, it is clarified that it will be open to the MIDC to consider similar formula for Industrial Units in Roha Industrial area also, as they are considering the matter for Mahad Industrial Area in the matter of infrastructure damage charges.

16. The learned counsel for the MIDC also places on record a copy of the circular dated 18 December 2012 issued by the Executive Engineer, MIDC Mahad (C) Division, to all the industrial units in Mahad MIDC area calling upon the units to permit the MMA CETP Co-operative Society to take samples of Industrial effluent from the respective Industrial units for the purpose of samples and on failure of such industrial units, it will be open to MMA CETP Co-operative Society to stop receiving effluent from that unit into CETP by disconnecting the outlet pipeline of that unit. The circular also makes it clear that not extending cooperation with the Co-operative Society in the matter of collecting samples will be treated as contempt of Court. The circular is taken on record and marked "X" for identification.

17. As regards Lote Parshuram CETP, MPCB affidavit points out the performance of CETP for the last 6 months. It is stated that the outlet COD after treatment has improved from 2272 mg./ltr., to 352 mg./ltr., as against the permissible limit of 250 mg., per litre. From the chart produced along with the affidavit, it appears that as far as BOD outlet readings of the CETP Lote are concerned, on 11 December 2012 the reading was 144. In the readings produced by the learned counsel for the petitioner for the sample taken on 24 December 2012 from CETP, the COD level was 372, which is quite high as compared to the

permissible limit of 250. The BOD level was 120 as against the permissible limit of 100. It appears that the performance of the said CETP on 22 November 2012 COD was 440 and BOD was 185. Therefore, it appears that there is improvement after 22 November 2012, but the parameters are still not within the permissible limits. Therefore, Lote Parshuram CETP shall continue to take steps to improve their performance.

18. The MPCB affidavit also contains Future Actions/In Progress for improvement of Lote CETP which are required to be considered by the CETP Co-operative Society which shall respond to the same within two weeks from today. Learned counsel for Lote Parshuram Environment Protection states that he has received the affidavit of MPCB only today. Therefore, his client will respond to the said affidavit within two weeks from today.

19. Learned counsel for MPCB has also invited our attention to Exhibit -II to the affidavit giving particulars of large scale industries and the medium scale industries with generation and discharge of effluent to CETPs and actions initiated by the Board against the defaulting units. MPCB shall also indicate the names of units which have not shown improvement in their performance after the interim directions by MPCB such as forfeiture of bank guarantees. This shall be brought to the notice of the Co-operative Society running Lote Parshuram CETP area within one week from today so that the Co-operative Society can respond to the same within one week thereafter.

20. It was also brought to the notice of the MPCB and MIDC on earlier occasions to encourage the industries and their associations to exchange information about the feasibility of effluent being released by one industry being used as raw material by another industry. It appears that no concrete steps are taken in this behalf as no State Level Association of Manufacturers has taken up the issue. It appears that a large number of industries are operating in Tarapur MIDC area and similarly Mahad MIDC also has large number of industries.

21. The President of Mahad Manufacturers' Association who is present before the Court states that they will take up the matter with the President of the Tarapur Industrial Association for taking initiative for setting up Data Bank for this purpose. Since the matters relating to MIDC Tarapur area are coming up on 24 January 2013, the President of the Mahad Manufacturers' Association shall also attend the hearing on 24 January 2013 for this purpose.

22. Civil Suit No.942 of 2012 pertaining to the issue of infrastructure damage charges to be recovered from the industries in MIDC area Mahad and Writ Petition No.4234 of 2008 pertaining to infrastructure damage charges to be recovered from the industries in Roha Industrial Area shall also be placed before this Court on 24 January 2013.

23. Henceforth the MPCB/MIDC shall serve copies of their respective affidavits atleast two weeks prior to the date of hearing for the concerned area and the affidavits shall also be displayed on the website of MPCB/MIDC. This will enable the concerned CETP Co-

operative Societies to prepare their response within one week before the scheduled date of hearing.

Stand over to 24 January 2013.

CHIEF JUSTICE

(ANOOP V. MOHTA, J.)

Bombay High Court