

**BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE
BENCH, PUNE**

APPLICATION NO.42/2013

**Mayur Harishchandra Raskar & Anr Vs.Saswad Mali Sugar Factory Ltd.
& Ors**

**CORAM: HON'BLE MR JUSTICE V.R. KINGAONKAR, JUDICIAL MEMBER
HON'BLE DR. AJAY A. DESHPANDE, EXPERT MEMBER**

**Present: Applicant/ Appellant : Ms. Neha Pathak Adv
: Ms. Rohini Randive Adv
Respondent No.1 :P.M.Havnur w/ Subhash
Gandhi Adv
M/s M.P.Vashi & Associates
Respondent No.2 : D.M.Gupte Adv**

Date and Remarks	Orders of the Tribunal
<p>Item No.1 December 17, 2013 Order No.6</p>	<p>The Applicants have filed this Application under Section 18(1), read with Sections 14,15, 16 and 17 of the National Green Tribunal Act,2010, challenging the Consent to Establish granted for the Co-Gen Plant of the Respondent No.1, by the MPCB, on 15-1-2013, primarily on the alleged violation of the Government of Maharashtra Notification dated 13th July,2009, which is commonly known as River Regulatory Zone Policy. The Applicants allege that the proposed Co-Gen plant of the Respondent No.1, is located within the restricted 1 km. area from the flood line of 'Nira' River and therefore the prays for quashing and setting aside of the Consent to Establish.</p> <p>2. Admittedly, the Respondent No.1, is operating a sugar factory since 1932 and presently the sugar factory is having approved capacity of 25,00 tones cane crushing per day. In the year 2006, the Respondent No.1, started molasses based distillery and in the year 2010, further started grain based distillery. It is the case of the Respondent No.1 that for the sugar factory, molasses based distillery and grain based distillery; three (3) boilers were functioning. In order to modernize the sugar factory and the distilleries, as well as to reduce the air and water pollution, the Respondent No.1 has decided to install one (1) common boiler in place of three (3) existing earlier, which will be common for the sugar factory, distilleries as well as Co-Gen power plant. The Respondent No.1, further submits that three (3) common boilers were disconnected before five (5) months and from that day, the sugar factory and the distilleries are not functioning.</p> <p>3. The Applicants submits that in the Application for consent to establish the Respondent No.1, has mentioned distance of the proposed Co-Gen plant from 'Nira' river as 2.2 kms, however, the Applicants claim that actually this distance is less than one(1) km, which is a no development area, as per RRZ policy of 2009, and therefore, they seek for quashing and setting aside the</p>
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consent to establish.

4. The MPCB, in its affidavit, mentions that the Industry has replaced its old three(3) builders and turbines, which were not efficient and becoming out of use. The MPCB further submits that consent to operate for the sugar factory and the distilleries are valid. The MPCB, further submits that the Executive Engineer, Irrigation department, Phaltan, has given Distance Certificate in respect of proposed Co-Gen plant vide letter dated 26-10-2013, wherein, the distance of proposed Project from the average flood control line of 'Nira' river is about 1.200 m. The said certificate also certify that this Certificate is issued, as per the paragraph 11, of the Govt. Resolution dated 13-7-2009. The MPCB, further submits that the Consent Appraisal Committee, of the MPCB considered the certificate issued by the Executive Engineer and also various verification reports of SRO, MPCB, Solapur, in respect of installation of pollution control devices and has proved to grant consent to operate, subject to certain terms and conditions for the proposed Co-gen Plant on 4-12-2013.

5. The Tribunal in the earlier Order dated November 25, 2013, had directed the District Collector to depute a responsible officer of the rank not below that of the Deputy Collector and the District Land Surveyor to depute a responsible officer to conduct the spot inspection, in order to find out veracity of information regarding distance between 'Nira' river and location of Co-Gen plant, as per the G.R. The Collector, vide his report dated 11-12-2013, has reported that the distance between the average flood line of 'Nira' river and the proposed Co-Gen plant is 1015 mtrs.

The Learned Counsel for Respondent No.1, Industry, raised issues of limitation under Sections 14 and 16 of the NGT Act, mentioning that primary prayer of the Applicants is for quashing of consent to establish, which has been granted on 15-1-2013. He further prays that the Application is not maintainable, as there was an effective remedy available to challenge the consent to establish before the Appellate Authority, constituted under the provisions of Air and Water Act, however, the Applicant has not chosen to challenge consent to establish, and rather belated approached this Tribunal for the remedy, which is time barred.

7. We find that the chief bone of contention raised by the Applicants, is that the activity of the Industry is within 1 km. distance from average flood control line of 'Nira' river. Perusal of the relevant Notification, shows that in case of expansion activity, the question of such distance will have to be considered from the average flood control line of the river and the activity of the sugar factory. A close reading of G.R dated 13-7-2009, reveals that the parameters for new Project and the expansion of the Project stand on different footings. The report of the Collector dated 11-12-2013, shows that the distance of average flood control line of 'Nira' river and proposed Co-gen plant is 1015 mts. We cannot brush aside the public record at this stage. The Applicants have alleged that the Certificate of the Irrigation department is

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fabricated. There is legal presumption available in respect of such public document and hence, *prima facie*, we are not inclined to accept the contention of the Applicants at this juncture. Once it is found that the distance between Co-gen plant and the average flood control line of 'Nlra' river is a disputed question, it will be rather improper to shut down the production activity of the sugar factory, without tangible reasons and particularly, when such activities are going on since 1932.

8. Considering various issues raised by the Counsel for the Applicants and the Respondents and also the reports available on record, we find it appropriate to modify the Order dated 25-11-2013, by issuing following directions:

- 1) The Industry is allowed to operate Co-Gen plant, as per the terms and conditions given by the MPCB, for a period of six(6) months from the date of this order.
- 2) The Industry is allowed to operate the sugar factory and the distilleries, as per the consent conditions and any other directions given by the MPCB.
- 3) The MPCB, shall exercise at most vigil for compliance of conditions and the directions by the Industry.
- 4) The MPCB, to examine whether the proposed Co-gen plant is an expansion/modernization etc. of existing Unit or whether the Industry is treated by the MPCB as a new Industry and submit a detailed report of compliance of RRZ Notification. If so required, the Industry may seek regularization as per the legal procedure in this behalf.

Stand over to 30th January, 2014.

....., JM
(Justice V. R. Kingaonkar)

....., EM
(Dr.Ajay A. Deshpande)