

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPLICATOIN NO.34 OF 2014**

**CORAM:**

**HON'BLESRI JUSTICE V.R. KINGAONKAR  
(JUDICIAL MEMBER)**

**HON'BLEDR. AJAYA.DESHPANDE  
(EXPERT MEMBER)**

**B E T W E E N:**

- 1. Sukdeo S/o KarbhariKolpe,**  
Age: 60 years, Occu; Agriculture,  
R/oKolpewadi, TalukaKopargoan,  
District: Ahmednagar.
  
- 2. Sakharam S/o NathuKolpe,**  
Age: 55 years, Occu; Agriculture,  
R/oKolpewadi, TalukaKopargoan,  
District: Ahmednagar.

.....**APPLICANTS**

**A N D**

- 1. M/s KopargaonSahakariSakhar  
Karkhana Ltd.**  
(KarmveerShankarrao Kale  
SahakariSakharKarkhana Ltd.,)  
(Sugar Unit) Gautamnagar, Post  
Kolpewadi, TalukaKopargaon,  
District Ahmednagar.

**2. M/s Kopargaon Sahakari Sakhar Karkhana Ltd.**

(Karmveer Shankarrao Kale  
Sahakari Sakhar Karkhana Ltd.,)  
(Distillery Unit) Gautamnagar, Post  
Kolpewadi, Taluka Kopargaon,  
District Ahmednagar.

**3. The Maharashtra Pollution Control Board,**

Sub Regional Office,  
Through it's Sub Regional Officer,  
Savitribai Phule Vyapari Sankul, First Floor,  
Hall no.2 & 3, Near T.V. Center Savedi  
Ahmednagar.

**4. The Regional Officer,**

Maharashtra Pollution Control Board,  
Udyog Bhavan, First Floor,  
Trimbak Road, M.I.D.C. Compound,  
Near I.T.I. Satpur, Nashik.

.....**RESPONDENTS**

**Counsel for Applicant(s):**

Madhveshwari Thube-Mhase, Advocate.

**Counsel for Respondent(s):**

Mr. Anit A. Avhad, Advocate along with S.E.  
Avhad Advocate for Respondent Nos. 1 & 2.

Mr. D.M. Gupte / Supriya Dangre, Advocates for Respondent  
Nos. 3, 4.

**J U D G M E N T**

1. This is an Application filed under Section 14,15 read with Section 18 of the National Green Tribunal Act,2010. Both the Applicants are resident of village Kolpewadi, and are an agriculturists. They have claimed compensation due to loss of agricultural crop and damage to their lands, as a result of discharge of untreated effluents by Unit of the Respondent Nos.1 and 2 (In short, 'Sugar Factory').

**FACTS AND LIMITATION**

2. There is no dispute about the fact that both the Applicants are agriculturists and have their respective lands at village Kolpewadi. It is undisputed that the Respondent Nos.1 and 2, run a Sugar Factory of which main product is 'sugar' and bye products are country liquor, spentwash, waste water etc. The Sugar Factory was established a way back and is in operation over a long period of more than 30/40 years. The location of the Sugar Factory is on the border of Kolpewadi and Suregaon. At a short distance from the Sugar Factory, there is River 'Godavari'. There is underground pipeline which is used for carrying partially treated spent wash of the Sugar Factory. A part of said pipeline is underneath

of the agricultural land Gut No.48, owned by Applicant No.2- Sakharam. The agricultural land Gut No.98 admeasures 53-Rs and is situated at Shahajahapur, whereas the agricultural land Gut No.302, owned by the Applicant No.1, Sukdeo, admeasures 53-Rs and is situated at Kolpewadi.

**3.** Briefly stated, the Applicants case is that the Sugar Factory used to discharge polluted water and effluents in their agricultural lands, as a result of such untreated discharge of effluents, their lands become uncultivable. The groundwater of the area is polluted. The water has become unpotable. The untreated water flows from the lands of Applicants and released in 'Godavari' through a Nulla. They made several complaints which remained unheeded. Applicant No.2 – Sakharam had cultivated sugarcane crop, which was due for harvesting in the month of December, 2013. In the midst of December, 2013, the pipeline carrying spent wash of the Sugar Factory burst/broke open and, therefore, the spent wash gushed out in his agricultural land. Resultantly, the sugarcane crop standing in the area of 10-Rs was corroded. He made complaint with the Revenue Authority. The Revenue Authority, prepared panchanama in pursuance to his complaint. Though, Applicant No.1, Sukadeo, was making grievance through representations

since 2011, yet the Respondent Nos.3 and 4, had not taken necessary corrective measures to ensure that the Sugar Factory shall not discharge untreated waste water in the nearby area. The groundwater quality of the land has deteriorated due to discharge of effluents from the Sugar Factory. The Respondent Nos.3 and 4, issued certain directions when the water sample analysis indicated that the water was contaminated, unpotable and not useful for any purpose. Still, however, as per last consent to operate order dated 6.4.2013, was granted to the Sugar Factory after accepting Bank Guarantee of Rs.50,000/-. Contamination of groundwater has resulted into pollution of well water and therefore, Applicant No.1 Sukadeo, could not cultivate his land. His land has become barren, due to such pollution, because of untreated effluent discharged by the Sugar Factory. Consequently, the Applicants seek compensation of Rs. 25 lakhs and 20 lakhs respectively. They also seek directions against the Respondent Nos.1 and 2 for closure of the Sugar Factory. They also seek directions against MPCB, to take steps against the Sugar Factory to ensure that no damage is caused to the agriculturists of the area, due to pollution caused by the Sugar Factory.

**4.** Main contestants are the Respondent Nos.1 and 2. They resisted the Application by filing joint written



statement. According to them, the Sugar Factory has provided Effluent Treatment Plant (ETP), with an adequate controlled equipment for Boilers and also provided stack height of 72 meters. The Sugar Factory provides treatment through two (2) stage RO (Reverse Osmosis) to bio digested effluent and Multi Effect Evaporators (MEE) mixed with press mud and burned in Gasifier to generate energy and bio char, which is used as Fuel/Manure. It is averred that the Sugar Factory has taken all necessary steps to control water pollution and air emission. It is further contended that the Applicants have made false allegations regarding discharge of untreated waste water by the Sugar Factory in the land adjacent to their agricultural crops, which caused damage to their crops. It is categorically denied that the Applicants suffered damages due to discharge of effluents by the Sugar Factory run by the Respondent Nos.1 and 2. So also, it is denied that the sugarcane crop of the Applicant No.2, in the area of 10-Rs, was corroded due to spread of spent wash on account of bursting of the pipeline, carrying spent wash, which runs through his land. According to the Respondent Nos.1 and 2, the pipeline runs underground approximately 1 meter deep and never broken down, known to them, it was broken within the area of land of Applicant No.2 – Sakharam. It

is alleged that both the Applicants have led improper and inflated claims without any foundation. According to contesting Respondents, Applicant No.2- Sakharam, did not allow them to repair the broken pipeline. The Sugar Factory was required to incur heavy expenditure due to obstinate conduct of Applicant No.2 – Sakharam. It is alleged that the Sugar Factory has paid Rs.49,341/- to the Applicants as payment for sugarcane crop on 5.4.2014. It is further alleged that average gross income for 10R Land will not exceed Rs.13,000/- per year and therefore, the claim put forth by Applicant No.2 – Sakharam, is highly excessive. Both the Applicants spread false rumors to defame the Sugar Factory and filed the Application with malafide intention. It is alleged that the Application is barred by limitation. It is also contended that ad-interim *ex-parte* relief, could not have been granted by the NGT, without hearing the contesting Respondents.

**5.** An additional affidavit filed by GirishJagtap on behalf of the Respondent Nos.1 and 2, in order to specify that water analysis reports, soil analysis reports, are normal and the ETP, will not be found to be effectively working.

**6.** The Respondent Nos.3 and 4, are the Regulatory Authorities, being Pollution Control Board and its

Regional Officer. On their behalf, affidavit of Ankush Phulse, regional officer, is filed on record. His affidavit is to the effect that the Sugar Factory is granted consent to operate subject to certain terms and conditions. Lastly, the consent was granted on 7.3.2014, which is valid up till 31<sup>st</sup> July, 2014. The Sugar Factory has not furnished the Bank Guarantee, as per the condition enumerated in Consent to Operate. It is contended that a Show-Cause Notice dated 28.11.2014, was issued to the Sugar Factory because of the fact that there were various non-compliances found during course of inspection. Inspection carried out by the MPCB, reveals that the Sugar Factory had not provided adequate ETP and also bypass arrangements to discharge substandard quality of effluent into Nulla was improper. However, during visit dated 29<sup>th</sup> March, 2014, it was noted that ETP was provided by the Sugar Factory and was well working. It was also found that it was bypass arrangement, provided to discharge substandard effluents from evaporation of span to open Nulla outside the factory premises. Thus, the Sugar Factory did comply with the directions of MPCB. The MPCB had received a complaint regarding incident about discharge of spent wash in the agriculture land of Applicant No.2 – Sakharam (Gut No.98) at Shahapur (Kolpewadi). The



regional officer, Nashik had then issued a Show-Cause Notice to the Sugar Factory on 6.1.2014. The Sugar Factory had stopped discharging of spent wash through pipeline after such a Notice given by the MPCB. The Sugar Factory started leaving of spent wash by using tankers after primary treatment of bio-digester for composting. It is stated that land of Applicant No.2 – Sakharam was damaged and a portion of his crop was corroded and as such, the panchanama was drawn on 24.12.2013. It is admitted by the Respondent Nos.3 and 4, that approximately 10-Rs, agricultural land of Applicant No.2- Sakharam, was damaged due to discharge of spent wash, as a result of bursting of pipeline, which goes through the land. According to the Respondents Nos.3 and 4, now, the Sugar Factory has upgraded the system and as such problem of air and water pollution is duly addressed.

**7.** The MPCB has further submitted that they have issued another Show- Cause-Notice to the Respondent-Industry on 22<sup>nd</sup> April,2014, based on certain observations made during the visit on 29.3.2014, calling upon the Industry to reply within seven (7) days or else the Board may revoke the consent granted to the Industry and also confirm the closure direction. The non-

compliances reported in this Show-Cause-Notice, are as under:

1. Treated effluent stored in 'Kaccha'pit unscientifically, having capacity of 22000 m. qb.
2. There was bypass arrangement provided to discharge substandard effluent Pan-condensate to open Nulla outside the factory premises on Kolgaon to Suregaon road.
3. Heavy stack emissions from boiler stack.
4. JVS reports of samples collected in 2013-2014, show that the quality of treated effluent, is not meeting with the consent standards.

Subsequently, during final arguments the MPCB informed that it not has taken any decision on the above said Show-Cause-Notice.

**8.** Considering rival pleadings and also submissions of learned Counsel for the parties, following issues arise for adjudication of the present Application.

- (i) Whether agricultural land or part thereof owned by Applicant No.1 – Sukadeo, has become uncultivable or barren for certain period, as a result of discharge of untreated effluents in the nearby Nulla, which caused pollution of groundwater and resulted into contamination of well water of the well situated in his land? If yes, what is

approximate loss suffered by him in terms of money?

(ii) Whether Applicant No.2, suffered loss of sugarcane crop in or about 10-Rs land bearing Gut No.98, due to breaking of pipeline/bursting of pipeline carrying spent wash discharged by the Sugar Factory run by the Respondents Nos. 1 and 2 due to faulty maintenance of pipeline? If yes, whether the Sugar Factory is liable to pay compensation to Applicant No.1 – Sukadeo, for loss of sugarcane crop due to such discharge of spent wash by the Sugar Factory in his land?

(iii) Whether the Application is barred by Limitation?

(iv) Whether groundwater quality in the surrounding areas, is deteriorated due to Industrial effluents of the Respondent-Industry and has resulted into damage to fertility of the agricultural lands in the area and if yes, whether remedial measures are necessary for improvement of water quality and what steps the Respondent – Industry and Authorities are required to undertake?

**Re :-- Points (i) & (ii) :**

**9.** We have heard learned Counsel for the parties. We have carefully perused the documents placed on record. It is pertinent to note that the independent Authority like

the Pollution Control Board, categorically admits two things. First, there was incident of breaking of the underground pipeline, which resulted into loss of sugarcane crop, standing in the land of Applicant No.2. Secondly, untreated waste water was being discharged and drifted through a Nulla connecting 'Godavari' river by the Sugar Factory. In other words, before updating all the equipment, the Sugar Factory had not taken due care to ensure zero discharge, though assurances were being given to install proper ETP. The MPCB had given interim directions vide communication dated 22<sup>nd</sup> March, 2014, for installation of proper ETP, furnishing of time bound programme to update ETP within one month, not to discharge substandard quality of effluents outside the factory premises in any condition and to furnish irrecoverable Bank Guarantee of Rs.50,000/-, as well as Bank Guarantee of Rs.5 lakh and Rs. 2.5 lakh, to secure compliance of the consent conditions. The documents placed on record, go to show that inspite of repeated directions of the MPCB, the Respondent Nos. 1 and 2, had not taken due care to improve the system, in order to ensure zero discharge.

**10.** Though, it is manifest from the recorded that there was understanding of breaking of underground pipeline, which resulted into gushing of spent wash in the

sugarcane crop standing in the land Gut No.98, owned by Applicant No.2 – Sakharam, yet, the Respondent Nos.1 and 2, flatly denied such averment. They came out with a case that the Application is based upon concocted averments. This attitude of the Respondent Nos.1 and 2, is unfair. It appears that the Respondent Nos.1 and 2, did not file any FIR at the Police Station. Had there been any sabotage or criminal act done by any anti-social elements, then they would have filed such report with the police. Absence of filing any complaint with the police, is indicative of the fact that bursting of underground pipeline did occurred, because of improper maintenance and undue care at the hands of the Respondent Nos.1 and 2. The Respondent Nos.1 and 2, were required to ensure proper handling of spent wash and other products of the Sugar Factory, so as to avoid adverse impact on the crops and the lands of nearby areas. The adverse impact of pollution caused by the Sugar Factory, must have been avoided by the Sugar Factory. The precautionary principle is squarely applicable in the context of the present case. It was expected that the Respondent Nos.1 and 2, should take precaution to avoid such mishap. They did not take adequate precaution to avoid the same.

**11.** Now, perusal of the visit report dated 29<sup>th</sup> March, 2014, prepared by the regional officer of MPCB that in



presence of villagers and the revenue officers, goes to show that in land Gut No.302, of village Kolpewadi, there was no crop found. Admittedly, Applicant No.1 – Sukdeo owns land Gut No.302, admeasuring 83-R. The inspection report further shows that the channel near Kolgaon-Suregaon boundary was found carrying water and there was water flowing through the gutter, running within boundary of the Sugar Factory. The Sugar Factory was found to have discharged untreated water in the Nulla and subsequently it was being discharged in a well. The water analysis reports of the water samples collected during the relevant period, are also indicative of the fact that the water found in the area was unfit for human use, agricultural use or for any other purpose.

**12.** Perusal of the photographs attached with the affidavit of the Respondent Nos.1 and 2, go to show that the Sugar Factory has updated the system. It is, no doubt, true that recently the Sugar Factory has improved the system and the effluent discharge being done scientifically. It also appears that certain incorrect reporting was done in the newspapers, however, that is not of much significance. The copy of 7x12 extract in respect of Gut No.302, shows that for the year 2010-2011, crop like Corn and Soyabin were cultivated in that land. One cannot be oblivious of the fact that there is a

well in the said land and Applicant No.1 – Sukdeo is the member of Sugar Factory. Still, however, now he is unable to cultivate sugarcane crop. The entries in the 7x12 extracts, show that the land is unfit for cultivation of such crop, which requires irrigation.

**13.** Be that may as it is, fact remains that due to discharge of untreated effluent in the land Gut No.302, owned by Applicant No.1–Sukdeo, at least for some period, may be of a year or so, his land became uncultivable. So also, is quite explicit that due to bursting of pipeline, running underneath the land of Applicant No.2 – Sakharam, his land Gut No.98, also suffered loss due to corroding of sugarcane, in or about area of 10-Rs. The Respondent Nos.1 and 2, failed to demonstrate that they observed precautionary principle. The loss caused to the Applicants cannot be attributed to ‘act of God’, i.e. “*vis major*”. Obviously, it is due to improper care taken by the Respondent Nos. 1 and 2, particularly, for the purpose of arresting discharge of spent wash and discharge of untreated water from the Sugar Factory, that such damage is caused. Needless to say, both the Applicants are entitled to compensation for loss sustained by them and the Respondent Nos. 1 and 2, also shall be liable to restore the damage caused to the lands and groundwater in the area.

**14.** As regards quantum of compensation. It is true that the Applicants have not given sufficient evidence to justify the amounts claimed by them in the Application. It is true that the amounts claimed by them appears to be of much higher side. What appears from the record is that Applicant No.1 Sukdeo, probably lost irrigation facility for a period of couple of years and, therefore, might have suffered financial loss for about Rs.2 lakh. His claim for compensation of Rs. 25,00,000/- (twenty five lakh), is highly inflated. It is without any rationale and foundation. It appears that Applicant No.2 Sakharam, lost sugarcane crop standing in 10-Rs area for one year, which could be valued at Rs. 1,50,000/-, considering expenditure required by him for the purpose of cultivation and overhead charges etc. Learned Counsel for the Respondent Nos. 1 and 2, invited our attention to payment given to Applicant No.2 Sakharam by the Sugar Factory. We do not found it enough to consider such payment receipts as sufficient evidence to determine the quantum of compensation, particularly, in view of the fact that the Respondent Nos. 1 and 2, have not come forward with clean hands. Because they tried to deny each and everything in their reply affidavits. The quantum of compensation has to be assessed, of course, on the basis of hypothesis and goods work, having regard to the

market value of the crops, overhead charges and relevant factors in the rural area. Considering aspects, we deem it proper to hold that the Applicant No.1, is entitled to receive compensation of Rs.2 lakh and the Applicant No.2, is entitled to receive compensation of Rs.1.5 lakh from the Respondent Nos. 1 and 2.

**Re:- Point (iii)**

**15.** So far as question of limitation is concerned, we cannot overlook the fact that the present Application is covered by Section 14 read with Section 15 ( ) of the NGT Act, 2010. An Application can be filed within a period of five (5) years from the date of 'cause of action'. Alleged cause of action, even if it be stretched to the year 2013, or first week of the said year, yet, the Application filed as on 10.3.2014, is well within limitation. The Respondent Nos. 1 and 2, failed to show as to how the Application is barred by limitation. The Application cannot be, therefore, dismissed on such ground.

**Re:- Point (iv)**

**16.** It is observed from the submissions made by the Applicants and also the Respondent Nos.3 and 4, that the MPCB had collected samples of the well water from the wells in Kolpewadi, Suregaon and Kolgaon on random basis in last few years. It is noted that the MPCB had collected two (2) samples from the wells of the Applicants

on 5.11.2011 and the reports of MPCB further indicate that the water quality is highly deteriorated, particularly, in terms of BoD, CoD and conductivity etc. Further some other groundwater samples collected by the MPCB and enclosed along with the additional affidavit, are also exceeding the standards. However, the sampling exercise conducted by the MPCB, is quite random and it seems that no scientific approach was adopted to design a sampling network and then establish an appropriate sampling frequency, so that reliable statistic information can be derived from such data. No doubt, random sampling at various locations indicate the status of the groundwater quality, which is deteriorated due to various reasons including the impact of uncontrolled discharge and storage of the industrial effluent, particularly in 'Kaccha' lagoon by the Respondent-Industry; the exact quantum and spread of pollution cannot be assessed from such random data. It would have been more appropriate on the part of MPCB, that in view of regular complaints, a scientific data base should have been developed, on the groundwater status in the area. In absence of such data base, the Tribunal finds it difficult to suggest specific remedial measures and also, the costs associated with such remediation.



**17.** The issue of groundwater contamination seems to be serious, as it is undisputed fact that the Respondent-Industry, is providing water supply to some of the villagers due to well water pollution. The groundwater is an important natural resource and more importantly remediation of pollution of groundwater is a very complex subject, as it is difficult to assess the level and spread of contamination and further remediation takes long time to perform and, therefore, it is necessary that efforts shall be taken by the Regulatory Authorities to avoid groundwater contamination on priority basis. In the instant case, probability of further contamination of groundwater still persists, as the reports of MPCB indicate that treated industrial effluents of the Respondent-Industry, are even now not meeting the norms and the critical parameters of BoD and CoD and are still highly exceeding the standards. The MPCB further submits that 'Kaccha' lagoons are still in the operation and untreated effluent, is stored in the same. All these observations give clear indications of continued groundwater contamination. The MPCB should have taken immediate action for stopping the use of 'Kaccha' pit and carrying out necessary remediation thereof on priority. Further, it is not clear what action plan MPCB has taken for continuous violation of its consent

conditions by the Respondent-Industry. The fact that MPCB has not taken any action after issuing Show-Cause-Notice on 22<sup>nd</sup> April, 2014, when the matter is before the NGT, speaks a volume. We have already given our elaborate opinion on the enforcement policy of MPCB in the matters of ***VinolKalwalvs State of Maharashtra (Application No.30(THC)/2013)*** we expect that the MPCB to take suitable legal action in the instant case also, within next two (2)weeks.

**18.** The Tribunal finds that the groundwater quality in the surrounding area, has been deteriorated, as observed from the MPCB reports. However, in absence of scientific data base, skill and spread of the groundwater contamination cannot be assessed. It is, therefore, necessary that the MPCB, which is Regulatory Authority, and is also mandated under Section 17 of the Water Act, and shall take immediate measures to formulate the comprehensive and scientific action plan for remediation and improvement of the groundwater quality in the surrounding areas. The MPCB may conduct necessary assessment of groundwater pollution in the vicinity of the Respondent-Industry and develop necessary action plan for restitution and restoration of the groundwater quality within next six (6) months. The MPCB shall direct the Respondent-Industry to execute such action plan and if

the Industry is unwilling or unable to execute such action plan, then MPCB shall execute the same on its own, may be by taking the help of an Expert Agencies, if required. The entire restitution and restoration exercise, shall be completed maximum in next two (2) years. The entire costs of developing of action plan and also execution thereof, shall be borne by the Respondent-Industry, which shall be recovered by the MPCB from the Respondent-Industry.

**19.** Taking stock of foregoing reasons, we are inclined to partly allow the Application in the following manner:

- (I) The Application is partly allowed.
- (II) Applicant No.1- Sukdeo, shall recover compensation of Rs. 2,00,000/- (two lakhs) and Applicant No.2 Sakharam, shall recover compensation of Rs. 1,50,000/- from the Respondent Nos.1 and 2, along with interest @ 18% p.a. from the date of the Application till said amount is paid by from the Respondent Nos.1 and 2 to them, under Section 14 read with Section 15 ( ) of the NGT Act, 2010.
- (III) The Respondent Nos.1 and 2, shall restore damaged land to its original position at their own costs and also shall restore the water quality of the well in the area surrounding the Sugar

Factory, as noted by the MPCB in the Joint Inspection Report. This work shall be carried out under the supervision of the Regional officer of MPCB the Deputy Collector, and the District Agricultural Officer, Ahmednagar.

(IV) The MPCB shall prepare necessary action plan for restitution and restoration of groundwater quality in the surrounding areas and execute the same as detailed in above paragraphs. The Collector, Ahmednagar, shall review the progress of this direction on quarterly basis.

(V) The progress report of restitution and restoration works, shall be submitted to the NGT, (WZ) Bench Pune, at the end of each quarter by the MPCB, and the Collector, Ahmednagar, for next two (2) years.

(VI) The MPCB shall issue necessary directions to the Respondent No.1 to improve their pollution control systems in next six (6) months. In case, the Respondent No.1, fails to improve the pollution control system, the MPCB, shall take further action of revoking/refusal of consent and/or closure of Industry. In case, such action is initiated by the MPCB, the restart and/or

renewal of consent shall be done only with the permission of the Tribunal.

(VII) The Respondent Nos.1 and 2, shall pay costs of Rs.50,000/- to the Applicant Nos.1 and 2, being costs of Application and legal fees. They also shall pay costs of Rs.25,000/- to the Respondent Nos.2 and 3 and shall bear own costs.

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

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

Date : 30<sup>th</sup> July, 2014.

NGT





**NGT**