

BEFORE THE APPELLATE AUTHORITY CONSTITUTED BY THE
BOARD UNDER THE PROVISIONS OF THE RIGHT TO INFORMATION
ACT, 2005.

Shri Kanhyalal Chabulal Jalgaonkar,
1/19, Rajlaxmi, Radhakrishna Nagar,
Milk Federation Road,
Jalgaon – 425 001.

... Appellant

V/s

Public Information Officer (HQ),
Maharashtra Pollution Control Board,
Kalpataru Point Bldg., 3rd Floor,
Sion(East), Mumbai-400 022

... Respondents

ORDER

The Appellant has filed the first appeal dtd.26/6/2007 aggrieved by the information given by the Public Information Officer(HQ), making unnecessary wild allegations against the working of the Board. The Appellant has used bad words against the officers and about the working of the Board. The Appellant has asked to supply the following information :

1. A copy of Govt. of Maharashtra Gazette Notification in respect of the Lower Tapi River Basin declared as 'Water Pollution Prevention Area', under the then Maharashtra Prevention of Water Pollution Act, 1969.
- Public Information Officer(HQ) personally attended the hearing before this Appellate Authority on 20/07/2007 at 14.30 hrs. The appellant telephonically requested the Appellate Authority to give next date on

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account of unbearable body pains. It was made clear to him that in case the concerned officers of the Board attends hearing, the Appellate Authority will be unable to extend the date of hearing, because the officers are required to attend other day to day official work also and therefore, the

Appellant may submit an additional reply and documents if any, he wanted to rely upon, either by fax or speed post, otherwise, the Appellate Authority will have no option than to hear the concerned officer/s and perused the available record and then to pass appropriate order in the matter on the basis of record made available to it. Public Information Officer (HQ) specifically brought on record his efforts to find out a copy of the Notification in respect of declaration of Tapi River basin as an 'Water Pollution Prevention Area' under the then Water Act, 1969. He had contacted the Legal Deptt., Technical Br. and the concerned person / Draftsman keeping such type of record. However, he was told that since Notification was issued by the Urban Development Deptt, Govt. of Maharashtra, the applicant may be communicated accordingly. Public Information Officer given point-wise reply to the applicant stating that then Maharashtra Prevention of Water Pollution Board was constituted and working under the Urban Development Deptt.,Govt. of Maharashtra prior to 1985. Therefore, the information about 'Lower Tapi River Basin' as 'Water Pollution Prevention Area', may be called from the Urban Development Deptt., Govt. of Maharashtra

During personal hearing, the Public Information Officer brought on record the information about the Maharashtra Prevention of Water Pollution (Repeal) Act, 1981. The said Act repealed the Maharashtra Prevention of

Water Pollution Act, 1969 and adopted the Water (Prevention & Control of Pollution) Act, 1974. The Water (Prevention & Control of Pollution) Cess Act, 1977 with its amendment of 1978. A copy of Maharashtra Act

No.XXXI of 1981 published in Maharashtra Govt. Gazette on 25/5/1981 was shown to the Appellate Authority. Similarly, Public Information Officer also produced before the Appellate Authority, Maharashtra Govt. Gazette No.WPB1081/613 (95A) UD-17, dtd.1/06/1982, which made it clear that the Govt. of Maharashtra constituted w.e.f. 10/7/1981 a State Board called the Maharashtra Water (Prevention & Control of Pollution) Board under Water (Prevention & Control of Pollution) Act, 1974. The Maharashtra Act No.XXXI of 1981 clearly made applicable to the entire State of Maharashtra and therefore, after adoption of Water (Prevention & Control of Pollution) Act, 1974, there is no need to refer to the declaration of Tapi River Basin as 'Water Pollution Prevention Area'. It appears that the practice of referring to particular 'Water Pollution Prevention Area' continued after repeal of Maharashtra Prevention of Water Pollution Act, 1969. This has created confusion and therefore, the appellant wanted to have copy thereof. Since, the copy of declaration about Tapi River Basin as 'Water

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Pollution Prevention Area' is not available with the Maharashtra Pollution Control Board on account of repeal of the then Maharashtra Prevention of Water Pollution Act, 1969, it will be more appropriate to make available the Appellant copies of the Govt. Resolutions dtd.25/5/1981 and 1/06/1982. Public Information Officer is hereby instructed to make available above copies to the appellant. However, since resolutions about declaration of Tapi river is not available with the Public Information Officer, MPCB, which is already not in force, the appellant may collect it directly from the Urban Development Deptt., Govt. of Maharashtra, if available with them.

2. The Appellant asked a copy of the proposal submitted by M/s.S.K. Oil Industries. Public Information Officer asked permission / NOC of M/s.S.K. Oil Industries, Jalgaon, whose proposal was asked by the Appellant.
 - M/s.S.K.Oil Industries objected to supply a copy of their proposal to the appellant vide letter dtd.18/06/2007. The Public Information Officer shown a copy of the letter in original to the Appellate Authority. After referring Section 11 of the Right To Information Act, 2005, it has been observed that the proposal in the form of application for renewal of consent was submitted by M/s.S.K. Oil Industries, which is a third party. Sub-Section 3 of Section 11 of RTI Act, 2005 provides that decision is to be taken as to whether or not to disclose information or

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record or part thereof and give in writing the notice of decision to the third party with a right to prefer an appeal under Section 19 against the decision. In the instant case, it appears that a copy of an application for consent was called, unless the application includes the details of project, for which, patent or trademark is obtained, the Authority is of the opinion that it can not become confidential or secret information for not to disclose. Public Information Officer is not having copy of such application. Therefore, it will be more appropriate that the Sub-Regional Officer, MPCB, Jalgaon-I, who is also Public Information Officer for his area should go through the said application and find out as to whether the application contains any information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of M/s.S. K. Oil Industries, he may satisfy himself about larger public interest, which warrants the disclosure of such information, as per Section 8(d) of RTI Act, 2005. Thereafter, Sub-Regional Officer, MPCB, Jalgaon-I, who is also Public Information Officer for his area may communicate his decision to M/s.S.K. Oil Industries, giving him an opportunity to prefer an appeal u/s 19 of the RTI Act, 2005 against his decision and then after giving both of them (appellant & him) an opportunity, Sub-Regional Officer, MPCB, Jalgaon-I (PIO-Jalgaon) may decide as to whether to disclose the information or not ?

3. The Sub-Regional Officer, MPCB, Jalgaon-I has submitted certain documents i.e. additional Affidavit in Reply on behalf of the

Respondent NO.2 in the Writ Petition No.1408/2002 filed by the appellant against the State of Maharashtra & Ors. before Hon'ble High Court of Judicature at Aurangabad, analysis reports of the effluent samples collected from M/s.S.K. Oil Industries from time to time, visit & inspection report dtd.11/4/2007, 16/4/2007 etc. The additional Affidavit clearly gives the details of actions initiated by Sub-Regional Officer, MPCB, Jalgaon-I against M/s.S.K. Oil Industries, subsequent steps taken by M/s.S.K. Oil Industries for providing air & water pollution control arrangements, the analysis reports etc. Thus, the appellant being petitioner in the said matter has received almost all the information about M/s.S.K. Oil Industries including visit reports and analysis reports. Hence, the grievance of the appellant about pollution being caused by M/s.S.K. Oil Industries is not correct. In fact, the above petition is subjudice and therefore, the appellant should not have made any sort of complaint about the subject matter of pending the petition.

4. The Appellant has used very bad words in his appeal, which is highly objectionable. The Appellant should not use such type of words in his representation in future.

The appeal is accordingly partially allowed. The application of the appellant is remanded back to the Sub-Regional Officer, MPCB, Jalgaon-I

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being Public Information Officer for that area to take decision as per above order and the provisions of RTI Act, 2005.

Dated this 20th day of July, 2007 at Mumbai.

Sd/-
(D. T. Devale)
Appellate Authority
MPCB