

MAHARASHTRA POLLUTION CONTROL BOARD

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Mumbai-400 022.

No. *mpcb/ 1B-5101*

Date: *06/11/2013*

CIRCULAR

Sub : Regarding preparation of documentary evidence.

Ref :

1. Circulars issued vide Nos.WP/LW/99, dtd.13/1/1989 and No.WP/LW/370, dtd.16/11/1990
2. Orders dtd.6/2/2013 respectively passed by Hon'ble JMFC, Kolhapur in Sum.Criminal Case No.7745/1997 filed by MPCB vs M/s.Kumbhi Kasari SSK Ltd.

The Board had issued circulars regarding preparation of documentary evidence to be filed before the Hon'ble Courts of Law in the criminal complaints filed by the Board against the defaulting industries/corporation etc. However, it has been observed that the officers of the Board are not following the said procedure for preparation of documentary evidence.

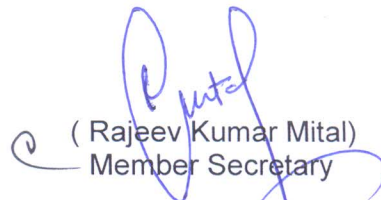
The Board has filed Sum. Cr.Case No.7745/1997 against M/s.Kumbhi Kasari SSK Ltd., before Hon'ble JMFC, Kolhapur for discharging untreated industrial effluent into Kumbi Kasari River without any treatment and causing pollution thereof.

Hon'ble JMFC, Kolhapur has passed detail order dtd.6/2/2013 and acquitted the accused. Hon'ble JMFC-Kolhapur mentions at para No.25, is reproduced as under :

"If the case in hand is considered, the Regional Officer though aware of the mandatory provisions has not followed them. Merely, documentary evidence have filed on record stating that there is pollution. However, for the want of mandatory procedure being followed, the said documentary evidence cannot be considered. Therefore, I am of the view that the complainant has miserably failed to establish the case. Apart from the same, I think it proper to bring this fact to the notice of not only Maharashtra Pollution Control Board but also to the Central Pollution Control Board, to make that authority to understand as to how the Board is in fact doing the public work. I must mention here that the incidents which are quoted in the case have taken place in the year, 1997. The conduct of the Board who is responsible for collecting samples, sending it for analysis is not only negligent and careless, but it also amounts to defiance in duties. The Board is enacted to implement the Act in its true spirit, but it is in fact is careless and negligent in giving the letters of law its true spirit. Therefore, I take this opportunity that the conduct of the Board officers is required to be communicated not only to Maharashtra Pollution Control Board, but also to Central Pollution Control Board to make them understand the duties imparted by their officers."

A copy of the said order is enclosed for perusal. In this regard the Board has already issued detailed circulars dtd.13/1/1989 and 16/11/1990 in respect of procedure to be followed u/s 21 of the Water (P&CP) Act, 1974 for collection of LES and preparation of documentary evidence. All the Officers/Regional Officers/Sub-Regional Officers are hereby instructed to circulate the said order alongwith the circulars hoisted on the website of the Board dtd.16/11/1990 and 13/1/1989 to the Field Officers under their control for taking precautions while taking samples from the

industries, operations & process by adopting due procedure, failing which, the concerned officer will be held responsible for the pros & consequences of the same.


(Rajeev Kumar Mital)
Member Secretary

Copy to : Joint Director(WPC)/Joint Director(APC)/ Principal Scientific Officer/Asstt.Secretary (Tech.)/ Regional Officer(HQ), MPCB, Mumbai – for information and necessary action – for information and necessary action.

Copy to:

- 1) Regional Officer, MPCB, Mumbai/Navi Mumbai/ Thane/ Kalyan/Raigad/Pune/ Aurangabad/ Nagpur/Nashik/Kolhapur/ Amravati/ Chandrapur, MPCB – for information and necessary action. They are requested to circulate the said circular alongwith order to the officers under their control.
- 2) Law Officer/I/c Law Officer, MPCB, Mumbai – for information and necessary action.
- 3) Incharge Officer, Central Lab., Mahape, Navi Mumbai/Sr.Scientific Officer (HQ-1&2/Nagpur for information and necessary action - They are requested to circulate the said circular under their control.
- 4) Scientific Officers, Regional Laboratory-Nagpur/Nashik/Pune/Aurangabad/ /Lote Parshuram/Thane, MPCB – for information and necessary action - They are requested to circulate the said circular to the officers under their control.
- 5) Sub-Regional Officer, –HQ/Mumbai-I/Mumbai-II/Mumbai-III/Thane-I/Thane-II/Tarapur-1/Tarapur-II/ Navi Mumbai-I/Navi Mumbai-II/Taloja/Kalyan-I/Kalyan-II/Kalyan-III/Raigad-I/ Raigad-II/ Raigad-III/Mahad/Kolhapur/Sangli/Ratnagiri/Chiplune/Pune-I/Pune-II/Pimpri-Chinchwad/ Satara/ Solapur/Aurangabad-I/Aurangabad-II/ Aurangabad-III/Nanded/Nashik/ Ahmednagar/ Jalgaon-I/Jalgaon-II/Nagpur-I/Nagpur-II/Nagpur-III/Chandrapur/Amravati-I/ Amravati-II/Akola/ Parbhani/ Latur/Bhandara, MPCB – for information and necessary action. They are requested to circulate the said circular to the officers under your control.
- 6) All Asstt.Law Officers (P&L Divn.),MPCB, Mumbai - for information and necessary action. Asstt.System Officer, MPCB, Mumbai – for information and necessary action. He is instructed to place the said circular on the website of the Board.

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Received on : 02.08.1997
Registered on : 02.08.1997
Decided on : 06.02.2013
Duration : Y M DS
15 06 04

IN THE COURT OF JUDICIAL MAGISTRATE F.C., COURT NO.1,
KOLHAPUR

(Presided over by Neeta S. Anekar)

Exh. No. 117/B

Sum. Cri. Case No. 7745/1997

Maharashtra Pollution Control Board,
Shri.Chhatrapati Shivaji Maharaj,Municipal
Market Building, 4th floor, Paltan Road,
Mumbai- 400001, (Represented by Shri.
Balkrishana Damodar Kude), Regional
Officer, Maharashtra Pollution Control
Board,Udyog Bhavan Building, Near
Collector Office, Kolhapur – 416 003.

Complainant.

Vs.

1. M/s. Kumbhi Kasari S.S.K. Ltd.,
(Sugar and Distillery Dvn.) Kuditre,
Tal. Karveer, Dist. Kolhapur,
(Represented by its Chairman Shri.
Sarjerao Joti Patil, age Major,
R/o.Kumbhi-Kasari,S.S.K.,Ltd.
Kuditre, Tal.Karvir.

Accused.

2. M/s. Kumbhi Kasari S.S.K. Ltd.,
(Sugar & Distillery Dvn.), Kuditre,
Tal. Karveer, Dist.Kolhapur,
(Represented by its Managing
Director Shri. Nimbalkar Jagderao
Ishwarao,R/o. Factory site, Kuditre.

Wanekar
6/2/2013

CHARGE : Offences under section 4 of the Water (Prevention and Control of Pollution) Act, 1974.

Smt. C.D. Gaikwad A.P.P. for State of Maharashtra.
Shri. V.V. Patil Advocate for accused.

J U D G M E N T

(Delivered on 6 th February, 2013)

1] Present complaint is filed by the complainant which is a body corporate constituted under section 4 of the Water (Prevention and Control of Pollution) Act 1974, which is hereinafter referred as the "Act."

2] The case of the complainant is as follows:-

Accused no.1 is a Cooperative society, and accused no.2 is the Managing Director of accused no.1. He is a person incharge of and responsible for the conduct of business of accused no. 1 as well as for compliance of consent conditions and the implementation of the Act. Factory of accused no.1 is situated at Kuditre Tal.Karvir, Dist. Kolhapur which is notified under section 18 of the Act and further declared as "Water Pollution Prevention Area" under the Act. The factory of accused no. 1 is engaged in the manufacture of sugar, molasses, alcohol etc. by using raw materials such as sugar-cane lime in the process. Section 24 of the Act prescribes for prohibition of use of stream or well or sewer or on

land for disposal of polluting matters. Section 25, 26 of the Act prescribes consent of the board. As accused no.1 is engaged in production of sugar and alcohol, complainant board has issued two separate consent orders for sugar production and for alcohol production that is distillery. The accused industry has started sugar production in the year 1963 and alcohol production in the year 1993. The industry has obtained consent by making the application in the prescribed format. In the consent for sugar unit, treatment of industrial effluent its disposal, treatment of domestic effluent and its disposal, similarly other conditions and parameters are mentioned.

3] The officers of the complainant visited accused industry time to time and collected joint vigilance samples of effluent of Nalas and on 19.11.1996, 27.12.1996, 16.01.1997, 18.03.1997. The results of these samples were not confirming to the M.P.C. Board standards and were communicated to the accused. Warning notice has also been issued to the accused by the Regional officer on 02.01.1997. Sub-Divisional Magistrate Karvir, Vibhag Kolhapur has also issued a show cause notice under section 133-A of Code of Criminal Procedure, dated 17.05.1996 on the basis of report of the block development officer, panchayat samittee

Wanekar
6/2/2013.

Karvir. Block Development Officer has stated in his report that the accused industry had let out effluent into Kumbhi river which is a tributary of Panchganga river.

4] Executive Magistrate Tal. Karvir has issued a warning letter dated 26.05.1996. Sub-regional officer of M.P.C. Board Sangali has visited accused No.1 on 19.11.1996 and found that the effluent treatment plant was not in operation, and untreated effluent was being discharged directly into environment. Hence he has issued warning notice on 20.11.1996. In the letter dated 1.12.1996 accused no.1 has admitted non-operation of effluent treatment plant. The board has issued proposed directions as per Section 33-A of the Act on 30.12.1996 and accused no. 1 replied it on 15.01.1997 and admitted the fault.

5] Accused no.1 has provided, four effluent storage tanks, as stated in the reply dated 15.01.1997. However, during visit on 22.07.1997 it was observed that the four storage tanks were actually storage pits and were situated near a nalla which further meets Kumbhi river. These storage pits are haphazard and rain water enters into them. On inspection day, it was observed that the effluent storage pits were in damaged shape, wild grass

found to be grown in those pits. The pumping facility was found to be provided for first pit and not for the other pits. Sludge was found to be accumulated in all four pits. There were chances of effluents going to Nalla from the last pits. A warning letter has been issued on 23.07.1997. But accused no.1 has not replied it so far.

6] The waste water which is called as spent wash of the industry after bio-digestion is mixed with press mud to form compost at Satarde village site. This site is in a hilly area with high slope towards Kasari river. The board officials have visited compost site and collected leachate samples on 17.04.1996 from its collection well and Harijan Vasti well. Both the results were not confirming to the standards prescribed in the consent order, and its results were communicated to accused industry on 20.12.1996.

7] Sub-Regional officer received a complaint from Gat Vikas Adhikari Panhala regarding spent wash discharge from accused industry and thereby polluting Kasari river. Sub-regional officer has written warning letter to industry on 29.08.1996.

Wanekar
6/2/2013.

8] Complainant himself visited accused site on 22.07.1997 and found that there are 20 compost pits. Out of which only 6 are concrete pits and 14 pits are embanked with shahabad stones, and those pits were damaged and eroded. The under ground pipe discharged leads to a Nala which further meets Kasari river. Blackish effluent near the pipe end was observed on the inspection day. The letter has been given to accused on 23.07.1997, but its reply was not given.

9] The board has also filed a detail affidavit in reply in writ petition no. 979/1997 wherein Hon'ble High Court has directed to take necessary legal action for the pollution caused by the Industry.

10] The proposal for granting authorization to complaint against the accused was placed before consent Appraisal committee in its meeting on 02.05.1997. Accordingly after scrutinized the consent was given.

11] The regional officer of the Board has issued warning notice to the accused on 02.01.1997. But accused has not taken its cognizance. After warning notice the board has also issued proposed directions under section 33-A of the Act. However, accused industry has failed to comply with the proposed directions and thereby are liable for punishment of 41

of the Act. Thus the accused continued to commit the offences punishable under section 24, 25, 26, 33-A, 42(2), 43, 45-A and 41 and therefore the complainant has filed the present complaint.

12] Pursuant to the process of this Court, the accused appeared. The record shows that my learned predecessor has proceeded with the trial of this case as "warrant case" and accordingly order was passed below Exh.1.

13] Before framing of charge, the complainant board has examined Balkrishana Damodar Khude (C.W.1) and on hearing both the sides, I have framed charge against the accused below Exh. 108, to which they pleaded not guilty and claimed to be tried. Their defence is of total denial. After framing of charge further cross examination of Balkrishana Khude (C.W.1) was completed by the accused. Thereafter complainant has examined Pradip Pralhad Dhaigude (C.W.2). It is a matter of record that complainant has moved pursis Exh.114 and has not adduced any further evidence on record. The accused have not examined any witnesses nor examined themselves as witnesses.

14] I have heard both the sides, on hearing them following points arise for my determination.

Wanekar
6/2/2013.

POINTS

FINDINGS

1. Does the complainant prove that accused No. 1 being a Co-operative society and accused No. 2 being Managing Director of accused no.1 being a person in-charge of and responsible for the conduct of business of accused no.1, during 19.11.1996, 18.03.1997 accused have not complied thereof standards of effluent which are exceeding the limits prescribed in the consent order, accused failed to provide adequate and suitable arrangement for the treatment and disposal of effluent to meet the standards prescribed and the consent order and thereby resulted into discharge of the effluent into nallah resulted into pollution of river Kumbhi and thus accused knowingly permitted the effluent to enter into the river leading to or likely to lead a substantial aggravation of pollution due to other causes or of its consequences, in respect of which warning notice has been issued to accused by the regional officer dated 02.01.1997, Sub Divisional Magistrate Karvir Registrar, has also issued show cause notice under section 133-A of Code of Criminal Procedure, dated 17.05.1996 on the basis of report of block development officer, similarly Executive Magistrate Tal. Karvir has issued a warning letter to them dated 26.05.1996. accused did not comply the important conditions of consent order and instead of effluent storage tanks it is observed that, they were actually storage pits and are situated near a nallah which further meets Kumbhi river, those storage pits are in damaged shape and wild grass is found grown in those pits in respect of which warning letter has been issued to accused dated 23.07.1997, but accused have not replied it. Similarly, on visit to the compost site on 17.04.1996 and on collection of leachate sample, results were not confirming to the standards prescribed in the consent order and the results were communicated to the accused on 20.12.1996 and thus accused did not comply the important conditions of consent order and thereby caused pollution of in Kasari river ?

No.

2. Does the complainant prove that on the same date and time, the regional officer of the board has issued warning notice to accused on 02.01.1997, but accused failed to take cognizance of that warning notice, thereafter Board has issued proposed Directions under section 33-A of Water(Prevention and Control of Pollution)Act, 1974 on 01.01.1997, however accused failed to comply with the proposed directions issued by the Court ?

No.

3. What order ?

As per final order.

REASONS

15] As to points No.1 and 2 :

As these points are inter-related they are taken up for common discussion.

The water (Prevention and Control of Water Pollution Act, 1974) is an Act to provide for the prevention and control of water pollution and maintaining or restoring of wholesomeness of water, for the establishment, with a view to carry out the purposes aforesaid, of boards for the prevention and control of Water pollution, for conferring on and assigning to such boards powers and functions relating thereto and for the matters connecting there-with.

Wanekar
6/2/2013.

16] In the present case, complainant has to establish that, the accused have not complied with the standards of effluent as appearing in the consent orders. And after persistence communication to them, they have not cured the defect and thus are liable for causing pollution of the Kumbhi river and ultimately the environment.

17] The evidence is required to be assessed in that regard.

Balkrishana Damodar Kude (C.W.1) claimed that he was working as Regional Officer, the Factory of accused no.1 obtained the consent which is below Exh.55. He claimed that on 20.11.1996 the Deputy Regional Officer visited the factory and submitted report Exh. 58. Accused has replied the same, vide letter Exh. 59. On 30.12.1996 Proposed directions as per Section 33-A were issued to the accused which is below Exh. 60. Accused has replied the same which is below Exh. 61. He claimed that vide letter Exh. 63 the report of analysis in respect of the samples collected on 19.11.1996 were informed to the accused. Vide letter Exh. 64, he has informed the accused as regards analysis of joint vigilance sample collected on 17.12.1996 The analysis report of the sample collected on 27.12.1996 is below Exh. 65.

18] He further claimed that Shri. Dhaigude visited the factory on 16.01.1997 and collected the sample from 3 places, at that time environment Engineering of the factory by name Shri. T.A. Bhosale was present. The report of Shri. Dhaigude is below Exh. 66. The analysis reports of the samples collected are below Exh. 67, 68 and 69. The said reports were informed to the accused vide letter Exh.70. He claimed that on 18.03.1997 Shri. Dhaigude visited the factory and collected the samples from 3 places. At that time, environment engineer Shri. Bhosale was present there. The said reports are below Exh 72,73 and 74 and he informed the said reports to the accused vide letter Exh. 75.

He claimed that on 22.07.1997 he visited the factory and issued letter Exh.76 informing them about the pollution. The letter of consent appraisal committee is below Exh.77. His predecessor has issued letter Exh. 78 to the accused, and accused has replied it vide reply below Exh. 79. He claimed that Exh. 80 is the letter issued by Deputy Regional officer to the accused. Exh.81 is the letter issued to the accused informing it about the analysis report. On 30.12.1996 the member secretary has issued proposed directions to the accused which is below Exh.83. His reply is below Exh. 84. As per the sanction accorded which is below Article A present complaint has been filed.

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6/2/2013

During cross examination it is brought on record that he visited the factory of accused no.1 on 22.07.1997 and on that day he has not collected any sample. In respect of his visit, he has not informed to the factory and at that time he has not visited effluent plant. It is brought on record that while collecting the samples in respect of reports Exh. 67,68,69,71 he was not present. He has further admitted that the rules are prescribed for collecting the samples. He has admitted that the sample collected on 18.03.1997 was received by the laboratory on 21.03.1997. He denied that in the consent Exh. 98, in view of the writ petition the Board was responsible for the pollution and therefore, he has filed the present case. The aforesaid evidence can be properly appreciated alongwith other evidence on record.

19] Pradeep Pralhad Dhaigude (C.W.2) claimed that in the year 1997 he was working as Sub Regional Officer by the board, on 16.01.1997 he visited the factory of accused no. 1, and collected the samples of effluent from 3 places. At that time environment engineer — Shri. Bhosale was present. The statement is below Exh. 66. He sent the sample to Regional Laboratory for its analysis. He claimed that the said samples were

collected as per the procedure. Its analysis reports are below Exh. 67,68 and 69. He further claimed that on 18.03.1997 he collected the samples of effluent from the factory of accused no.1 and at that time, the representative of accused Shri. Bhosale was present. His statement is below Exh. 71. The analysis reports are below Exh. 72,73,74.

During cross examination he has admitted that such rules are prescribed for collecting samples and they are mandatory in nature. He has further admitted that at the time of taking samples, on 16.01.1997 and 18.03.1997 or before it, he has not given notice to the accused. He denied that the samples were not collected as per the procedure.

20] The testimony of these two witnesses is corroborating to each other as regards collection of sample, sending it to Analysis and informing its result to accused factory. Both the witnesses have admitted that certain rules are prescribed for collecting samples, and they are mandatory in nature.

21] In that regard, I may take recourse to Section 21 of the Act which reads as follows :

Wanekar
6/2/2013.

Section 21 : “ Power to take samples of effluents and procedure to be followed in connection therewith -

(1) A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis, samples of the water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into such stream or well.

(2) The result of any analysis of a sample of any sewage or trade effluent taken under section - (1) shall not be admissible in evidence in any legal proceedings unless the provisions of sub-section (3) (4) and (5) are complied with.

(3) Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub-section (1), the person taking the sample shall-

(a) serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analyzed ;

(b) in the presence of the occupier or his agent, divide the sample into two parts,

(c) cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent ;

(d) send one container forthwith -

(i) in a case where such sample is taken from any area situated in a Union territory' to the laboratory established or recognized by the Central Board under Section 16; and,

(ii) in any other case, to the laboratory established or recognized by the State Board under Section 17;

(e) on the request of the occupier or his agent, send the second container,

(i) in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or specified under sub-section (1) of Section 51, and,

(ii) in any other case, to the laboratory established or specified under sub-section (1) of Section 52.

(4) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under Cl.(a) of sub-section (3) and the occupier or his agent willfully absents himself, then,-

(a) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person shall inform the Government analyst appointed under sub-section (1) or sub-section (2), as the case may be, of Section 53, in writing about the willful absence, of the occupier or his agent, and

(b) the cost incurred in getting such sample analyzed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent; as the case may be, as an arrear of land revenue or of public demand.

Wanekar
6/2/2013.

Provided that no such recovery shall be made unless the occupier or, as the case may be, his agent has been given a reasonable opportunity of being heard in the matter.

(5) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under Cl.(a) of sub-section (3), and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in Cl.(b) of sub-section (3), then the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i), or sub-clause (ii), as the case may be, of Cl.(a) of sub-section (3).

22] If the aforesaid legal position is considered, then it becomes mandatory for the Board to observe the process of sampling strictly. If the oral testimony of Balkrishana Kude (C.W.1) is considered alongwith the reports Exh. 35 to 38, 47,48, 50, 51, 66, 67, 68, 70, 71, 72, 75, 76, 77, it do not prescribe that at the time of collection of sample, the notice as per section 21(1)(a) was served on a person in-charge of, or having controll over the plant or vessel or in occupation of the place, or any agent of such occupier in the plant prescribed informing him his intention to have the sample analysed. Similarly, aforesaid analysis

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reports no where prescribe that at the time of collection of sample, it was divided into two parts in the presence of occupier or its agent. It is also no where prescribes that one sample was sent to the laboratory established or recognized by the State Board, under section 17 of the Act. The object behind sub section (4) and (5) is that, the occupier or agent has a right to get the second sample analyzed by the laboratory established or specified under sub-section (1) of Section 52. In the absence of following of such procedure, the evidence as regards collection of sample cannot be considered.

23] Complainant witness no.1 who was the Regional Officer has also admitted as regards proper sampelling procedure that has to be followed before taking the samples alongwith the fact that it is mandatory. However, prima facie there is no evidence on record to show that the said proper procedure, was in fact followed. It is also no where prescribed that before collection of sample its notice was given to accused, whether at the time of collecting sample it was divided in two parts as required as per Section 21, sub-sections (3),(4) and (5) of the Act. Unless the said evidence is brought on record by the complainant, the

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6/2/2013

result of analysis of the sample of the trade effluent is not admissible in evidence in view of Section 21(2) of the Act. It is to be further seen that both the Regional Officer and sub-Regional officer were aware of the mandatory procedure that was to be followed, however, they have not followed it when the samples were actually taken. In view of the same, the defence raised by the accused that the Board has given directions to the Regional office to lodge prosecution against the present accused and in that haste the present complaint is filed requires to be accepted.

24] I must mention here that the "Act" is framed to prevent and control the pollution of the water. The problem of pollution of water by trade effluent is a Social Problem affecting public at large. Article 51-A of the Constitution enumerates fundamental duties of every citizen which includes duty to protect and improve the natural environment including lakes, river and wild life. Chapter IV-A of Constitution of India, regarding fundamental duties is not enforceable in the Court of Law. But the same was considered inherent in our constitution. The present Act is a social welfare legislation which gives effect to Article 47, 48-A of Constitution and also to the intention of Article 51-A which provides for fundamental duties of a citizen. The statement of object and the reasons

of the Act itself indicates the purpose of the Act. It provides that the problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a growth industry and increasing organization. It is therefore, essential to ensure that domestic and industrial effluents are not allowed to be discharged into the water without adequate treatment. The said Act has been enacted to ensure and achieve the said goal as I have discussed earlier.

25] If the case in hand is considered, the Regional Officer though aware of the mandatory provisions has not followed them. Merely documentary evidence have filed on record stating that there is pollution. However, for the want of mandatory procedure being followed, the said documentary evidence cannot be considered, Therefore, I am of the view that the complainant has miserably failed to establish the case. Apart from the same., I think it proper to bring this fact to the notice of not only Maharashtra Pollution Controll Board but also to the Central Pollution Controll board, to make that authority to understand as to how the board is in fact doing the public work. I must mention here that the incidents which are quoted in the case have taken place in the year 1997. The conduct of the Board who is responsible for collecting samples, sending

Wanekar
6/2/2013

it for its analysis, is not only negligent and careless, but it also amounts to
defiance in duties. The board is enacted to implement the Act in its true
spirit but it is in fact is careless and negligent in giving the letters of law
its true spirit, Therefore, I take this opportunity that the conduct of the
board officers is required to be communicated not only to Maharashtra
Pollution Control Board, but also to Central Pollution Control board to
make them understand the duties imparted by their officers.

26] In the result, the evidence on record is not cogent and reliable, so as to hold that the accused have not complied with the parameters of standards of effluent and knowing permitted the effluent to enter into the river, caused its pollution, and did not comply and adhered to conditions of consent orders. The complainant has also failed to establish that the accused failed to comply with the ~~proposed~~ directions issued as per section 33-A of the Act, punishable under section 41(2) of the Act. Hence, I answer points no.1 and 2 in the negative.

27] **As to point No.3 :**

As I have answered points no.1 and 2 in the negative, accused

deserve to be acquitted and following order would meet the ends of justice.

ORDER

1. Accused No.1 – M/s. Kumbhi Kasari S.S.K. Ltd., (Sugar and Distillery Dvn.) Kuditre, Tal. Karveer, Dist. Kolhapur, (Represented by its Chairman Shri. Sarjerao Joti Patil, and accused no.2.M/s. Kumbhi Kasari S.S.K. Ltd., (Sugar & Distillery Dvn.), Kuditre, Tal. Karveer, Dist. Kolhapur,(Represented by its Managing Director Shri. Nimbalkar Jagderao Ishwarao, are hereby acquitted of the offences under sections 24,25,33-A punishable under section 43,44,45-A,41(2)of the Water (Prevention & Control of Pollution) Act, vide Section 248 (1) of the Code of Criminal Procedure.
2. Their bail bonds stand cancelled.
3. The copy of this order be sent to Maharashtra Pollution Controll Board and to Central Pollution Central Board for their information.

Dictated and pronounced in open court.

DT: 06.02.2013.

(Neeta S. Anekar)

Judicial Magistrate F.C.Court No.1.

Kolhapur.



खरी नकल

सहाय्यक अधीक्षक

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नकल तपासणार