

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION No. 30/2013(WZ)**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)
Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

Mr. Vitthal Gopichand Bhungase,
Aged : 22, Occ : Fishing,
Resident at : Dusalgaon,
Tal.: Gangakhed, Distt : Parbhani

....Applicant

A N D

1. The Gangakhed Sugar and Energy Ltd.,

At Vijaynagar, Makhani,
Taq : Gangakhed,
Distt : Parbhani

2. Ratnakar Manikrao Gutte,

Chairman of the Gangakhed Sugar
And Energy Ltd.,
At : Vijaynagar, Makhani,
Tal : Gangakhed, Distt : Parbhani

3. The State of Maharashtra,

Through : Ministry of Environment
And Forest, Govt. of Maharashtra,
Mantralaya,. Mumbai 400 032.

4. The Secretary,

Ministry of Animal Husbandry

Dairy Business and Fisheries,
Govt. of Maharashtra, Mantralaya
Mumbai 400 032

5. The Collector,

Collectorate Campus,
Parbhani, Distt : Parbhani

6. The Maharashtra Pollution Control Board,

Through : The Regional Office, Pune.

At : Jog Centre, 3rd floor,
Mumbai – Pune Road.

Wakdewadi, Pune 411 003

7. The Executive Engineer,

Mazalgaon Jaikwadi Irrigation Project,
Section No.2, Parali Vaijnath,
Tq. : Parali, Distt : Beed.

...Respondents

Counsel for Original Applicant :

Mr. Asim Sarode,

Mr. Vikas Shinde,

Counsel for Original Respondent Nos.1 & 2 :

Mr. Subhash Gandhi/Mr. Kisan Wagai,

Counsel for Original Respondent Nos.3, 6 & 7 :

Mr. D.M. Gupte/Ms. Supriya Dangre,

Mr. V.V. Mundhe, Field Officer.

DATE : 30th July, 2014

J U D G M E N T

1. The Application is filed by one Shri Vitthal Bhungase under Section 14, 15 and 17 of National Green Tribunal Act, 2010 seeking following reliefs :

(I) Strict actions may kindly be taken against the Respondent No.1 and 2 for their roles and involvements in creating the environmental damage, supporting and assisting the illegal anti-environment Acts.

(II) Directions may kindly be given to the Respondent No.1 that releasing industrial wastes, molasses and chemical mixed water must be stopped, so that purity of Mazalgaon

Right Canal and Mannath Lake shall be maintained.

(III) Directions may kindly be given to Respondent Nos.3 to 7 that necessary legal action from time to time against Respondent No.1 for discharging and spreading pollutant in the Mazalgaon Right Canal and Mannath lake may be taken as per law.

(IV) That fine may kindly be imposed on the Respondent No.1 and 2 for making pollution, supporting the anti-environmental actions at Mazalgaon Right Canal and Mannath Lake and nearby area.

(V) The Respondent No.1-Sugar Factory i.e. the Gangakhed Sugar and Energy Ltd., at Vijaynagar, Makhani, Taluka Gangakhed, Dist. Parbhani may kindly be directed that the Applicant and its members may be compensated for the loss sustained by them to the tune of Rs.60 lacs and to constitute an expert committee to finalize the actual loss sustained by the Applicant and his community members due to pollution in Mannath Lake, Gangakhed Taluka District Parbhani.

(VI) Expenses for filing this Application and expense for legal consultation may also kindly be given to the Applicant from Respondents. The Respondent No.1-factory and Respondent No.2 has compelled the Applicant to approach this Hon'ble Tribunal and hence the Respondent may kindly be asked to pay compensation to the Applicant and his community.

(VII) The injunction may kindly be granted so that no person or organization shall throw waste or discharge industrial wastes into the Mazalgaon Right Canal and Mannath Lake. Directions may be given for strict implementation of such Rules framed.

2. The Application is of composite nature alleging continuous non-compliance of environmental norms by Respondent no.1-Industry and non-performance of obligations by the regulatory and enforcing agencies arrayed as Respondent Nos.3 to 7 on one hand and seeking environmental damages for pollution of "Mannat lake" and loss of water resources, fisheries and ecology due to discharge of pollutants by the Respondent No.1. The Applicant claims to be from fishermen community and living on the earnings of

the fishing deried from the “Mannat lake”. The Applicant is also a member of registered Co-operative Society working for the collective benefit and overall progress of the society members who are dependent on fishing activities carried out in Mannat lake as a source of their livelihood.

3. The Applicant has arrayed M/s. Gangakhed Sugar and Energy Ltd. who have its industrial plants in the vicinity as Respondent No.1 while Respondent No.2 is Chairman of Respondent No.1 industry. Respondent No.3 is Environment Department, Government of Maharashtra while Respondent No.4 is Department of Fisheries, Govt. of Maharashtra. The Respondent No.5 is Collector of Parbhani and Respondent No.6 is MPCB, an authority which is expected to implement various environmental legislations in the State. Respondent No.7 is Irrigation Department and is in-charge of said Mannat lake and Mazalgaon Right Canal.

4. The Applicant claims that their Society has been given lease for the fishing rights at Mannat Lake business on contract payment basis by the Fisheries Department, Government of Maharashtra. However, since last three (3) years, the industrial effluents discharge from Respondent No.1 industry is polluting the water in Mazalgaon Right canal and Mannat lake, causing water pollution and thereby

causing a threat to human health, fishery yield and ecology. The Applicant claims that he and the Fisherman Co-operative Society have made regular complaints to various authorities bringing such pollution to their notice for immediate action. It is the grievance of the Applicant that though the authorities have done some paper work but no deterrent and stringent action has been initiated against the Respondent No.1 and the Pollution is still continuing. The Applicant rely on various communications from these authorities addressed to Respondent No.1 wherein pollution of the lake and the canal has been mentioned and also, certain damages caused have been cited by the Irrigation Department for replenishing the water to wipe out the polluted stagnant water, resulted due to ingress of molasses and other effluent from Respondent No.1-Industry. Several communications from fisheries department addressed to the Respondent No.1, specifically high-lighting the probable damages and loss of fisheries on account of water pollution are also referred.

5. The Respondent No.1 submits that the industry basically has three (3) units namely, sugar unit, distillery unit and co-generation unit. The sugar plant is of 600 MT per day sugar production capacity and is equipped with Effluent Treatment Plant (ETP) capacity of 720 M³ per day which is sufficient to meet the treatment norms stipulated by MPCB.

The industry also has 25 hectare of earmarked agricultural land for using the treated effluent for irrigation purpose. The Co-Gen plant has the ETP of 1360 M³ per day capacity. The distillery unit of industry is of 60 killo liter (KL) per day capacity, which started commercial production in January 2011. This distillery unit is zero discharge industry where the entire effluent i.e. spent wash generated in the industry is fully consumed in boiler as fuel and for that the industry has provided Reverse Osmosis System, multiple effect evaporator followed by incineration boiler. The Industry has invested substantial capital amount for installing the State of Art pollution control system and also, incurring significant expenditure for efficiently operating the same.

6. Respondent No.1 has also raised objection about maintainability of the Application and questioned as to how the applicant is entitled for the relief claimed. The Respondent No.1 alleged that though said society was taken over by the Administrator long back, the Applicant has misled this Tribunal by filing this Application without any authority and without any *locus-standie*. The Applicant has also resorted to makeing several unsubstantiated personal allegations against Respondent No.2 which cannot be dealt by this Tribunal, and will be dealt by Respondents separately as per the legal advice.

7. The Respondent No.1 submits that MPCB i.e. Respondent No.6 is competent authority for investigating the issues related to industrial pollution, water pollution and loss of ecology as mandated under the Provisions of Water (Prevention and Control of Pollution) Act 1974 and Environmental Protection Act 1986. The Respondent No.1 submitted that MPCB regularly carries out inspection of the Respondent Industry for verifying the performance of the pollution control system and ensuring compliances of has issued consent conditions and directions. They have placed the visit reports of MPCB dated 17-2-2012, 8-8-2012, 30-10-2012, 17-12-2012, 8-1-2013, 3-9-2013, 21-11-2013 and 21-12-2013 on record which also includes joint visit report to show that there is no discharge of any industrial effluent by the Respondent-industry outside the factory premises and any non-compliance of the consented conditions. The Respondent further submits that MPCB has already submitted the water quality of Mannat lake which is generally in order and there is no evidence of pollution which can affect the fisheries in the lake. It is, therefore, the submission of Respondent No.1 that the Application has been filed without substantiating the facts and also without any merit which needs intervention of this Tribunal. It is the submission of Respondent No.1 that the department of fisheries to whom the

Applicant has made complaint has not investigated the complaints and assessed the factual position. The authorities have only completed the paper work by warning the factory whenever they received the complaints in this regard.

8. Respondent No.6-MPCB has filed additional Affidavit in reply claiming that they have filed detailed Affidavit in reply on 29th October 2013. However, during the final arguments on 8-7-2014, it was noticed that this Affidavit is not on record of the Tribunal, further none of contesting parties have been served with this Affidavit. The Tribunal had given time to MPCB to furnish the copies of the same, by end of the day, however, the same has not been submitted by MPCB and therefore, their pleadings only through the additional Affidavit have been considered by the Tribunal. Respondent No.6-MPCB submits that they have caused a joint inspection of unit No.1 industry on 17-12-2013 and found that the sugar and co-generation plant and distillery unit were in operation. The Effluent Treatment Plant (ETP) provided to sugar and Co-Gen plant were in operation. The industry was found to be disposing the treated effluent on about 25 hectare land available for the purpose. The effluent quality was found to be in compliance with the regular standards. MPCB submits that they have granted consent to the distillery with a zero discharge condition i.e. Reverse

Osmosis System, multiple effect evaporators followed by re-boiler. The MPCB further submits that the Effluent Treatment Plant (ETP) of sugar unit of Respondent No.1 is at the upstream and on the corner edge of the land having slope towards Mannat Talav, Akoli Naka and possibility of accidental discharge of treated effluent/untreated effluent drifting in the lake during the rainy season cannot be ruled out.

9. The Respondent No.7 i.e. Irrigation Department filed an Affidavit on 27th January 2014 and submitted that the Mannat lake is in flow storage tank of 3.00 MM³ capacity with inlet and outlet tank of Mazalgaon Right canal having submergence of about 45 hectare, for fishing and irrigation of about 300 hectare. Respondent-7 submits that the Fishery Department leased out the fishing rights for this lake to Godavari Magasvargiya Matsya Vyavasayi Sahakari Sanstha. Respondent No.7 further submits that the Applicant is complaining since June 2010 that Respondent No.1 and 2 are releasing polluted and contaminated effluents in the Mannat lake. Respondent No.7 has informed the Respondent Nos. 1 and 2 time and again about such complaints of Pollution. Several communications in this regard are annexed, and some of these communications are regarding the receipt of complaints and warning/notices issued. However, some

communications like letter dated 23rd July 2014 record the observations of Engineers of the Department that polluted water are being released by Respondent Nos.1 and 2 in the canal and the lake. This letter also quantified the quantum of water which got polluted.

10. Respondent No.7 further filed additional Affidavit on 24th March 2014 which mentions that the Respondent-1 admitted fact about the pollution and contamination water in the Mannat lake by their letter dated 2nd September 2010 and 9th September 2010 due to discharge of effluent from their industry and also, agreed for payment of cost of water in Mannat tank, water released for flushing the tank and maintenance and repairs of infrastructure such as gate, roads etc. The Respondent No.7 released about 16.06 MM³ of water for flushing of tank during 8th September 2010 to 25th September 2010. The Respondent No.7 therefore submits that they have raised total charges of Rs.6,33,000/- with interest from 25th September 2010 as cost of restoration of Mannat lake water, due to the release of industrial effluent by the Respondent-1 and the Respondent No.1 has been requested for payment with reminders from time to time. It is the grievance of Respondent No.7 that Respondent-1 has not paid this amount towards the environmental damages in terms of loss of water sources in spite of follow up of the

department and therefore, Respondent No.7 pleads that the Tribunal should order such payment of Rs 16,33,000/- with interest from Respondent No.1 to Respondent No.7 towards loss of water which is an important natural resources, due to the indiscriminate effluent discharge by the Respondent No.1- Industry, leading to pollution of Mannat lake.

11. Considering the rival pleadings and also submissions of learned counsel for parties, following issues are framed for adjudication of the present Application:

- a)** Whether the Application is barred by limitation of time?
- b)** Whether the Mannat lake is polluted causing loss of fisheries and also resulting into undesirable water quality for fisheries and agricultural use ?
- c)** Whether the Applicant has made out a case of loss of fisheries due to the deteriorated water quality of Mannat lake due to industrial discharges of Respondent No.1 ? If yes, whether the Respondent No.1 is liable to pay any restitution or compensation costs ?

12. We have heard the learned counsel for the parties. We have also carefully perused the documents placed on

record. The counsel for the Applicant submits that the Application has been filed under Section 14 and 15 of National Green Tribunal Act, 2010, due to regular indiscriminate discharge of untreated effluent from Respondent No.1-Industry resulting into pollution of the canal and the Mannat Lake. It is his argument that every incident of untreated effluent released by the Industry is a separate cause of action. He also submits that there is a gross inaction by the Respondent Authorities who have failed to control such pollution. His claim is that though Applicant is not challenging the consent etc. given to the Industry, even by considering the first undisputed incident of untreated effluent discharge of June-July 2010, the Application is within the Limitation period of five (5) years prescribed under Section 15(3) of National Green Tribunal Act.

13. The Counsel for Respondents have also raised objection that the Application is not supported with Affidavit nor the Applicant has produced any authority from the other claimants for the compensation. He further submits that though the society was dissolved and is under the administrator, the Applicant is mis-leading the Tribunal and also the officials, by signing the papers as an office bearer of the said society. The Tribunal has taken a note of this and we will deal with the issues subsequently.

14. Section 15 of National Green Tribunal Act is clear on question of Limitation. It has been well established that the limitation once start running, cannot be stopped. We find a credible justification in the argument of counsel for the Applicant that with every incident of untreated effluent release it can constitute a fresh cause of action though we are not willing to express or give a final opinion in this regard simply because even otherwise, the first reported incident of untreated effluent discharge occurred in June-July 2010, well within limitation prescribed under section 15 of NGT Act,2010. Secondly, this Tribunal is competent to deal with the cases related to restitution restoration of environment and also compensation of environmental damages under Section 15 of National Green Tribunal Act and therefore, we are of the opinion that the present Application can be adjudicated by the Tribunal and can be proceeded further with. The Issue- (a) referred above is thus answered accordingly.

15. The Counsel for the Applicant submits that there are regular incidents of untreated effluent discharges by the Respondent No.1-Industry. He claims that all concerned authorities like Fisheries Department, Irrigation Department and Revenue Department have issued notices to the Respondent-Industry time and again which prove their

culpability beyond doubt. He also bring to the notice the letter from Respondent-Industry dated 2nd September 2010 wherein there is a clear admission of the fact that there was leakage from the molasses tank which along with the rain water got mixed with discharges drifted to the Mannat lake thereby polluting the water. He also submitted that the Fisheries Department categorically informed the Respondent No.1 vide letter dated 25-11-2011 that if the discharge of effluent leading to pollution of the lake will result in to approximate loss of about Rs. Twenty lacs (Rs.20,00,000/-). The letter also cites earlier communications in this regard with instructions that such indiscriminate discharge should be immediately stopped.

16. The Counsel for Respondent Nos.1 and 2 fairly admitted that there was an incident of molasses spillage in June-July 2010. On instructions, he further submits that the molasses tank has a capacity of 10,000 M³ and the incident happened because of non-provision of proper base to this molasses tank. His contention is that there is no further incident of any discharge of any type, from the Respondent No.1-Industry, subsequent to this incident and this has been established through various visit reports of the Pollution Control Board which is the competent authorities to deal with the pollution issues. He cited the joint visit reports of MPCB

dated 17-2-2012, 8-8-2012, 30-10-2012, 17-12-2012, 8-1-2013, 3-9-2013, 21-11-2013 and 21-12-2013. He submits that the Industry has provided a State of Art zero discharge facility for distillery unit investing significant amount. His contention is that this system is in regular operation and therefore, there is not even remote possibility that the distillery effluent will be released in environment. He further submits that the sugar and Co-Gen plant have necessary Effluent Treatment Plant and the same is operating efficiently. He submits that MPCB regularly visits the Industry and check the performance of the Pollution Control System. He, therefore, submits that barring the incident of June-July 2010 which was during early commissioning period of the Industry, the Pollution Control System at the Industry is performing efficiently and there is no probability of any incident of such accidental discharges.

17. During the arguments Shri D.M. Gupte, learned Advocate for MPCB relied on this additional Affidavit and further submits that MPCB has time and again inspected the factory premises. The sugar and power plant started somewhere in January 2010 and distillery unit started in August 2010. He further informed that MPCB had issued directions to the industry for accidental discharge in July 2010 and on 18th August 2010 certain interim directions were given. It is the grievance of the MPCB that Respondent No.1-

industry has not submitted the Bank guarantee of Rs.15 lacs which was stipulated in those directions. He also informed that the Bank guarantee of Rs.2,00,000/- (Rs. Two lacs) has been forfeited by the MPCB in past, the details of which could not be produced during the argument.

18. Faced with such conflicting stands, the Tribunal in its order dated 4-12-2013 directed the Collector to depute responsible officer and collect the samples of effluent discharged from the Industry. The said reports were submitted by Affidavit dated 3rd January 2014 and it was observed that the treated effluent was found to be disposed of on the agricultural land leased by the Industry and there was no discharge entering either Akola Nala or Mannat lake. The treated effluent sample also found to be generally within consented standard. The Applicant in further hearing also pleaded about the impact on fisheries and therefore, the Tribunal in its direction dated February 24th, 2014 directed Central Institute Industries of Fisheries Education (CIFE), Varsova Mumbai to collect the samples of effluent discharges which may drift towards Mannat lake, from the Respondent Industry and also, samples of said lake and submit status of water quality in lake and status of fisheries in the lake. The CIFE submitted the report during the hearing on March 24th, 2014 which is taken on record. The report is quite

comprehensive and deals with analysis and assessment of the quality of effluent of Gangakhed Sugar and Energy Ltd and water quality and fisheries status of Mannat lake. The conclusions are reproduced as under :

“The quality characteristics of effluent of Gangakhed Sugar and Energy Ltd., Vijaynagar, Makhani, Taluka, Gangakhed, District Parbhani, Maharashtra were within permissible limits. The lake water quality was also within the desirable range to support the fisheries of Mannath Lake.”

19. The Counsel for MPCB submitted that the Sugar and Power Industry was given first consent to operate on 10th March 2010 and the distillery unit started in August 2010. He submits that MPCB had investigated the incident of molasses spillage and pollution of Mannat lake and issued some instructions on 26th July 2010. Subsequently, Board also issued interim directions on 18th August 2010 directing some improvements including submission of Bank guarantee of Rs.15,00,000/- (Rs. Fifteen lacks). The Counsel further informed that this Bank guarantee has not been submitted by the Respondent No.1-Industry. He further informed that the Board had forfeited Bank guarantee of Rs.2,00,000/- (Rs. Two lacks) which was deposited with the Board separately. He further submits that subsequent to this incident, Board has regularly inspected the Industry for compliance purpose and

the Board has not taken or contemplated any action against the Respondent No.1 Industry for violation of consent and directions.

20. We may highlight the fact that, admittedly, in the month of June 2010, there was spillage of molasses from the molasses storage tank No.1 of the Respondent No.1-Industry. This molasses tank has a total capacity of 10,000 M³. The Counsel for Respondent No.1 fairly submitted that this spillage occurred due to construction default of not providing the proper base for this storage tank. The result is that the molasses gushed out and spilled over, leading to soil contamination and leachate leading to the nearby canal and Mannat lake. MPCB which has investigated this complaint has not placed on record the quantum of molasses spilled over and the area of the plant and surrounding affected by molasses spill over. These are tale telling facts and circumstances. It is obvious that such incident occurred as a result of improper construction of molasses storage tank by the Respondent No.1. Nobody can deny that if the molasses storage tank was appropriately constructed and molasses storage was scientifically managed by the Respondent-1, by taking necessary care including provision of dyke walls and emergency spillage control measures, then the incident would not have occurred. The incident itself is of such a nature that

no separate proof for “negligent act” on part of the Respondent No.1 is required to be adduced. This is a case for which principle of *res ipsa loquitur* is applicable. We have no hesitation, therefore, in holding that the Respondent No.1 committed gross negligence resulting into spillage of molasses that caused environmental damage to the surrounding area including the canal and Mannat lake. Needless to say, the Respondent No.1 is liable to restore environmental damages caused due to the incident. The remedy as available under Section 18 of National Green Tribunal Act, 2010 is inclusive of restitution, restoration and of compensation. The adjudication by National Green Tribunal has to be done on Polluters pay principle as enumerated in section 20 of National Green Tribunal Act 2010. We hold, therefore, that the Application will have to be allowed for certain reliefs claimed and proper measures should be taken to avoid future similar incident.

21. The Polluter Pay’s Principal is commonly interpreted as, the Polluter must pay for, the cost of Pollution abatement, cost of environment damage recovery, cost of incident management and compensation costs for the victims of the incident, if any, due to Pollution. It implies that those who caused environmental damage by polluting should pay the costs of reversing that damage and also controlling the further damage. Though the Principle is very simple, its

implementation is rather difficult and complex mainly due to the difficulty in identification of the Polluters and apportioning their responsibilities. Another concern, in implementation of this principle is to how the polluter should pay. Even the difficulties in restoring the ecological system, once it is disrupted or contaminated makes the assessment of payment in the terms of loss (loss of bi-diversity, loss of habitat, loss of top soft soil so on and so forth) difficult. Moreover, the payment is, at the end of the day, probably in terms of money. It is well documented that the monetary compensation do not essentially fully make up for ecological loss or loss of resource such as ground water, top soil, biodiversity and therefore, in reality to some degree, at least, the polluter never pays the real cost of the pollution, even if, some restitution or compensation is possible. The environmentalist generally, therefore, advocate the importance of 'Precautionary Principle' over the 'Polluter Pay's Principle' in the enforcement policies. The environment damage costing is an evolving subject and can involve both non market valuation as well as market valuation. There are various methodologies in literature for such environmental damage costing such as methods of direct market method, surrogate market based method, constructed market based methods and experimental methods. In the instant case where the damages are related to change in water quality of

Mannat lake, change in the characteristics of agricultural fields and also loss of means of livelihood due to not taking crop in the agricultural fields, a multipronged approach based on above methodologies needs to be taken by this Tribunal.

22. The Counsel for the Respondent Nos.1 and 2 referred to documents submitted on 24th March 2014 and informed that the said Society even in 2009-10, when Respondent No.1-Industry was not operational, was in loss as mentioned in the statutory audit. He further refers the same Audit Report wherein it is mentioned that there are no sale of fish conducted by the Society. He further mentions that though there are only 27 members in the year 2010-11, the claim submitted by the Applicant is for 37 members which clearly indicate that the Applicant has conducted a perjury by adding ten (10) names who were not members of the Society in the year 2010-11. He further refers the Audit Report of 2010-11 which mentions the negligence and unawareness of the Board of Directors resulted into loss of production, and no reference is made about the deteriorating water quality of lake. He further brings it to the notice from the various audit reports that the maximum yearly income of the Society is Rs.45,000/- per year and therefore, claims that even accepting the contention of the compensation, the claim cannot be more than Rs.45,000/- for one year. The Counsel for Respondent No.1 also alleges perjury and contempt

against the Applicant and mentions that the bills produced from two (2) firms namely Godavari Pravara Fisheries and Rafik Shaikh have been denied by those firms and the same has been put on Affidavit dated 23rd May 2014. He further submits that none of the submissions made by him on affidavit have been denied, responded or challenged by the Applicant, clearly indicating admission of the facts submitted by the Respondent 1 and 2.

23. The Counsel for Respondent 1 and 2 also submits that the water samples collected by any firm or agency which is not collected by the competent authority specified under the Water Act, without following due process listed in Section 21, is not admissible as evidence. He also submits that the compensation claimed has been submitted without any authority or without supporting Affidavit. While closing his argument, the Counsel fairly submits that though they are doing lot of work in the Pollution Control management and also, for the betterment of the Society in the vicinity, they are ready to work for environmental improvement in the area.

24. We are concerned with the issues raised by Counsel of Respondent Nos.1 and 2. The Counsel for the Applicant submits that the Applicant is unaware of the procedures and might have signed some papers as office

bearer of the Society, however, there is no intention to mislead or mis-guide the Tribunal. We have gone through the entire documents and failed to find any credible evidence about the damages to the fisheries due to the said incident. No doubt, the water quality was deteriorated; however, whether the fisheries stock was affected could not be established by the Applicant and also by the Respondent No.4 . The correspondence from Fisheries department is generally refereeing to the possible effects on fisheries in case of discharge of effluents by the Respondent-1. The fisheries department seems to have not assessed the effect on fisheries through scientific means, if they had seen such probability. In any case, in case of water pollution issues, they should have immediately informed and involved MPCB, who is the specialized organization for the necessary investigations. In the absence of such critical information, we are not inclined to accept the claim made by the Applicant about damage to fisheries. The CIFE, which is specialized agency, also finds that presently the water quality of Mannat Lake is fit for fishery.

25. We, therefore, wish to segregate the culpability of the Respondent No.1 due to the incident occurred in June-July 2010 into two parts, i.e. towards the restitution/restoration of environment and another is

compensation. There is already a report placed on record by the Irrigation Department wherein they have raised a claim of Rs.16,33,000/- along with in-----6% p.a. from date of the bill of demand till date of payment in as a cost of replenishment of the Water and also operation and maintenance charges which was incurred in the afterthought of the said incident. This cost can be taken as a cost of restoration of environment as admittedly, the Pollution of Mannat Lake is agreed even by the Respondent No.1 and the release of water has been adopted as an emergency measure for remediation of lake water quality. This cost does not include the loss of further revenue from the beneficial use of such water for irrigation or for other purposes.

26. We are not inclined to grant any compensation to the Applicant because he failed to establish loss to his income from fishery. Though we expect the Respondent No.1 to assist the local fishermen community through Respondent-4, Fisheries Department, to improve their fishery through proper training, guidance and also provision of some infrastructure, as a part of CSR Activities.

27. Accordingly we are inclined to partially allow the Application in following terms :

- a)** The Application is partly allowed.
- b)** The Respondent No.1 is directed to strictly comply the consented standard and Respondent No.6 shall ensure the compliances through regular monitoring. In case of violation, Respondent No.6 is at liberty to take stringent action, as deemed fit.
- c)** The Respondent No.1 shall pay the cost of replenishment of water in Mannat lake and cost of environment damages in the powers conferred upon this Tribunal vide Section 15(1) of National Green Tribunal Act.
- d)** The Respondent No.1-Industry shall also bear the costs of investigation by the Collector, Parbhani and also Central Industries of Fisheries Education (**CIFE**). Parbhani.
- e)** The Respondent No.1 is liable to pay Rs.5,00,000/- (Rs. Five lacks) towards the environment restitution costs to Collector, Parbhani who shall spend this amount for environment awareness initiative and also performances like plantation etc.
- f)** The Respondent No.1 shall pay Rs. 1.0 lakhs to the Applicant as cost of litigation.

g) All these amounts shall be recovered by Collector, Parbhani from the amount of Rs. 50,00,000/- deposited by the Industry with him, and the balance amount may be refunded to the Respondent-1.

Application is disposed of. No costs.

....., **JM**

(Justice V. R. Kingaonkar)

....., **EM**

(Dr. Ajay. A. Deshpande)

Date: 30th July 2014.

NGT