

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPLICATION No. 22/2013(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:**

Lokmangal Sansthan

Through : Smt. M.J. Tharayil,

Director Lokmangal Sansthan, Ghot,

Tah. Chamorshi, Distt : Gadchiroli

**....Applicant**

**V E R S U S**

1 Shri Sanjay Wadettiwar,  
Age 35 Yrs., Occn : Business,  
R/o.Ghot, Tq. Chamorshi,  
District : Gadchiroli.

2 Sarpanch, Gram Panchyat, Ghot,  
Tah. Chamorshi, Distt : Gadchiroli,

3 District Collector, Gadchiroli,  
(Deleted)

4 Shri Vitthal Wadettiwar  
(Dead)

4(a) Avinath Vitthal Wadettiwar

4(b) Ajay Vitthal Wadettiwar,

Both R/o. Ghot, Tq. Chamorshi,  
District : Gadchiroli.

4(c) Shobhatai Namdeo Katpalliwar,  
R/o.Jebgaon, Tq. Saoli,  
District : Chandrapur.

4(e) Chhaya Naresh Suranwar (Dead)  
Through :

1. Nakul Naresh Suranwar
2. Nikhil Naresh Suramwar,  
R/o. Saoli, Tq. SAoli,  
Distt : Gadchiroli.

.....**Respondents**

**Counsel for Applicant:**

**Ms. M.I. Tharagil, Adv.**

**Counsel for Respondent No.1 to 4 :**

**Mr. P.B. Borawar, Adv.**

**Counsel for MPCB**

**Mr. D.M. Gupte, Adv.**

**Ms. Supriya Dangre, Adv.**

---

**DATE : 11<sup>th</sup> December, 2013**

---

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

1 This application arises out of Civil action initiated by Applicant-Lokmangal Sanstha. Originally, Lokmangal Sanstha, filed Civil suit bearing Regular Civil Suit No.55/2003 against the Respondents in the Court of Civil Judge (J.D.), Chamorshi. Because the suit involves substantial civil dispute pertaining to environmental issues and in view of jurisdictional bar under Section 29(2) of the National Green Tribunal Act, 2010, the suit was transferred to this Tribunal.

2           The suit filed in the Civil Court was for declaration that permission dated June 29<sup>th</sup>, 2001 granted in favour of Respondent Nos.1 and 4 is void and therefore, construction of Sai Rice Mill in the proximity of Lokmangal Sanstha is illegal and **void-ab-initio**. In addition, Applicant Lokmangal Sanstha also prayed for permanent prohibitory injunction restraining the said Respondents from operating Sai Rice Mill unit or alternatively to take preventive measures to stop the nuisance caused by the air and noise pollution created due to running of the Rice Mill.

3           According to Applicant-Lokmangal Sanstha, it is a registered institution dedicated to upliftment of women in general and for their financial empowerment in particular. The Applicant runs a Training Institute which caters vocational programmes such as Typing skills, sewing, bamboo handicrafts, and preparation of herbal medicines, literacy classes, so on and so forth. The training institute is being run on land bearing old Survey No.396/2 and 396/3 (now S.No.8 and 9) which were originally owned by one Dilasagram Society. The latter gave that land on lease to Applicant Lokmangal Sanstha for a period of 30 years in or about 1997. Applicant Lokmangal Sanstha thereafter constructed building for the training institute as well as staff quarters on the said land. There is a big well of about 20 ft. diameter in the campus of institute for drawing potable water to be used by the inmates of the institute and staff members.

4 It is the case of Applicant Lokmangal Sanstha that the Respondents Nos.1 to 4 made certain encroachment over agricultural lands bearing S.No.6 and 7 and have constructed Sai Rice Mill at a short distance of about 10 ft from the residential quarters. So also, the construction of Rice Mill is in the close proximity of the premises of vocational classes of the training institute. The construction permission was granted by Respondent No.2 Gram Panchyat without calling of objections and without following the relevant Rules. The Rice Mill is being run constantly for 24 hours. The constant pounding sound and banging sound emanating from the Rice Mill causes serious sound pollution, which creates disturbance in the work of the training institute. The husk emanating from the Rice Mill fly helter-skelter. It floats in the nearby area and ultimately gets deposited in the kitchen and other parts of the institution as well as into the well which provides drinking water to the in-mates. The frequent flow of solid particles of chaff/husk also causes health hazard to the trainees, staff members, and others who are required to be in the premises of Applicant-Lokmangal Sanstha. The institute of Applicant-Lokmangal Sanstha is a social welfare organization, situated at village Ghot, Tq. Chamorshi, District Gadchiroli.

5 All the Respondents were duly served with the Notices. It appears that original Respondent No.4 died during pendency

of the suit. His Legal Representatives were brought on record as Respondent No.4(a) to 4(e).

6 Respondent No.1 filed W.S./reply-Affidavit and resisted the Application. He denied all the material averments made by Applicant Lokmangal Sanstha. He contended that the application is barred by limitation and as such, this Tribunal should not entertain the same. He denied the allegation that the Rice Mill is constructed on encroached portion land no.6 and 7. He also disputed that Lokmangal Sanstha has been given agricultural land bearing Old S.no.396/2 and 396/3 (now S.No.8 and 9) by Dilasgram Society on lease for a period of 30 years. He flatly denied that unit of the Rice Mill causes air pollution and sound pollution, particularly, endangering the rights of Applicant Lokmangal Sanstha. He emphatically denied that Applicant Lokmangal Sanstha has raised any substantial environmental dispute by way of filing the present Application.

7 According to contesting Respondents, inside the Rice Mill, pipes are fixed for emitting of the husk which is collected near inner wall of the Rice Mill, within its premises. The husk is useful for power generation plant as a fuel and hence it is immediately disposed of. There is no possibility that husk emitting from the Rice Mill would fly in the air, and will get deposited in the premises of Applicant Lokmangal Sanstha. There is no harsh sound created due to running of the Rice Mill and therefore, there is no substance in the allegation that there



is noise pollution because due to running of the Rice Mill. According to the contesting Respondents, the Rice Mill is not manufacturing unit as such, but it is only processing unit. In this processing, grains of the rice are mechanically separated from paddy and thereafter are polished. The Polishing work is done mainly by rubber rolls and separators are used for segregating husk from polished rice. No heavy machinery or furnace is used in the Rice Mill. The material collected while polishing the rice is subsequently used for extraction of edible oil, popularly known as "Rice Bran Oil". Thus, it is contended that there is no waste material left out nor any Pollution is caused by the Rice Mill. In nutshell, it is the case of Respondents that Rice Mill does not cause any actionable nuisance or environmental harm for which the Applicant Lokmangal Sanstha can ventilate grievances through the present Application. Hence, the Respondents sought dismissal of the Application.

8 We have heard Learned Counsel for the contesting parties and MPCB. Though MPCB has not separately contested the matter, yet, it being regulatory and monitoring agency, we had directed the MPCB to place on record the status report of *juxtaposition*. That Report is filed by the MPCB. We have perused the relevant documents including depositions recorded in the Trial Court.

9 The relevant issues, culled out for determination, may be stated as follows :

- 1) Whether the application is barred by limitation and liable to be dismissed for such a reason?
- 2) Whether Applicant Lokmangal Sanstha has made out a case to demonstrate substantial environmental dispute and existence of actionable nuisance of air pollution/noise pollution on account of running of adjoining Sai Rice Mill, run by contesting Respondents?
- 3) Whether Applicant-Lokmangal Sanstha is entitled to claim relief of declaration and injunction or of any other nature? If so, to what relief Applicant Lokmangal Sanstha is entitled?

For reasons discussed hereinafter, we have recorded our findings in the last but one paragraph of the judgment.

10 Before we proceed to deal with the environmental issues, arising out of the installation of the Rice Mill, let it be noted that there are certain guide-lines issued by the Central Pollution Control Board (CPCB) for installation of such industries. These guide-lines are required to be followed by the State Pollution Control Board while granting Consent to Rice Mills. The handling, storage and transport of the rice husk are the subject matter of mandatory guidelines issued by the CPCB which needs to be implemented through the consent mechanism. One of the main recommendations is that there shall be a close enclosure for blowing of rice husk. It is mill type enclosure which shall be closed from all the sides and have an access for loading and handling of the rice husk. Obviously, no activity regarding blowing and storage of rice husk shall be carried out, outside the said enclosure.

11           The important points in these guidelines are mentioned here. Rice husk is the largest byproduct of Rice Milling Industry which amounts to 22-24 per cent of the total paddy. The unit needs to handle large quantity of husk and store them within the unit premises till husk is used or sold. During the Milling of the paddy, rice husk is mechanically separated out in the de-husker machine and husk is conveyed to the storage yard through the husk conveyance system. This conveyance system varies based on the size of the Rice Mill. CPCB has categorized the rice mills with the capacity less than three tons per hour as small mills, 3 to 15 tons per hour capacity as Medium and greater than 15 tons per capacity at large. In most of the small mills, husk from the de-husker is simple blown to the storage yard with the help of blowers. In Medium and large mills, the husk is extracted from the de-husking machines and taken through the conveyance system to the cyclone where fine dust is separated out. The environmental issues in the Rice Mills are mainly related to the Management of the rice husk and the noise pollution due to the operation of the mechanical equipment. Central Pollution Control Board has already published guide-lines for: i. Siting of rice Sheller's/Mills, ii. Handling and storage of rice husk, iii. Handling storage and disposal of husk generated in boiler using rice husk as fuel in 2012.

The Rice Mills employ mechanical equipment for cleaning and milling activities for de-husking of the paddy. These mechanical equipments can cause significant noise pollution, particularly in



Rural site CPCB has already carried out study and following noise Pollution prevention measures have been recommended. Various generating sources in Rice Mill, Rotary, vibratory screen bucket, elevator, screw conveyors and grinders, motors etc. need to be provided with adequate noise prevention control measures including following :

- 1) Provide vibration dampening pads to prevent noise generated due to vibration.
- 2) To provide rigid enclosure for Rotting/vibrating screen.
- 3) All transfer points to be covered with rigid enclosures.

These guide-lines are quite elaborate and the chapter 10 proposes the siting criteria for the rice mills which should be considered by the State Pollution Control Board while granting consent to establish for the new Rice Mills. This section also gives guide-lines for handling storage and transport of the rice husk which shall be mandated by SPCB through the consent mechanism. One of the important recommendation is unit shall be mandated to provide a close on enclosure for blowing and storage of rice husk. This mill type enclosure shall be closed from all the sites and have an access for loading and handling of the rice husk. No activity regarding blowing and storage of rice husk shall be carried out, outside the said enclosure.

12           The grains of rice are required to be separated from the chaff by mechanical process. The Small Scale Industrial Unit needs to handle large quantity of husk and store the same within the close premises till it is sold away or otherwise disposed of in appropriate manner. During the milling of the paddy, rice husk is separated out in de-husker machine and husk is conveyed to the storage yard through the husk conveyor system. The conveyor system varies as per size of the Rice Mill. In most of the small Rice Mills, simple blower system is used which throws the husk to the storage yard with the help of wind blowers. The noise pollution is required to be minimized with the help of mechanical equipment. Any chance of mixing of the husk with water is likely to cause foul smell.

13           Considering the above background, it is important to note that the Training institute of the Applicant (Lokmangal Sanstha) was already being run much prior to installation of the Rice Mill of the Respondent Nos.1 and 4(a) to (e). We are not much concerned with the issue of encroachment over S.nos.6 and 7. The fact remains that they started the Rice Mill in the premises of said agricultural land somewhere in or about 2001-02. The training institute of Applicant (Lokmangal Sanstha) was being run about 10 years prior to installation of the Rice Mill. It appears that consent to establish the Rice Mill was issued on 8-12-2003 (Ex.D/1) by the MPCB. The MPCB granted consent till end of December 2005. One of the conditions imposed on the Respondent Nos.1 and 4 was that they shall take adequate measures for control of air pollution so as

not to cause nuisance to surrounding area arising from bad smell, gaseous or particulate emission.

14 There is an elaborate affidavit of Miss Annies Pappu Parapilly in support of the Application. She is a Social Worker. She has categorically stated that the Rice Mill emits husk which causes water pollution due to its falling in the adjoining well of the Training institute. Her version further shows that due to continuous running of the Rice Mill, the Training institute suffers from noise pollution. The husk blows out of the Industrial unit and causes health hazard to the staff members and inmates of the Training institute. She states that running of the Rice Mill has causes nuisance to the Training institute. The Learned Counsel for the Respondent Nos.1 and 4 has pointed out, from cross-examination of Miss A.P. Parapilly, that in village Ghot, there are two other Rice Mills in the residential locality. It is also pointed out that she does not know location of place where the Rice bran falls. She also admits that she has no knowledge whether the Rice bran is used for manufacturing of edible oil. She does not know where the polished rice falls from the out-let of the Rice Mill. These admissions of Miss A.P. Paralpilly are not sufficient to dislodge her version. Nothing of much importance could be gathered from her cross-examination so as to disbelieve her version. One cannot be oblivious of the fact that she has no personal interest in the matter. She is more interested in the social work and benefit of the welfare activities of the Training institute. She has no business rivalry

against the Respondent Nos.1 and 4. It is true, however, that solitary statement of Dr. Siddheshwar Naringe is not sufficient to establish the fact that the rice chaff/husk had triggered any epidemic disease in the near-by area.

15 We have perused the photographs filed along with the Application. It is an admitted fact that the Rice Mill is situated hardly at a distance of 10 ft. from the rear wall of the Training institute run by Applicant Lokmangal Sanstha. This fact is clearly seen from photograph No.2 (D-11). It appears that although the Respondent Nos.1 and 4 have erected a middle wall between the Rice Mill and the Training institute, yet, that wall is only a Kachcha wall without foundation. It is but natural that the said wall may collapse during rainy season and the husk will be exposed to the rain water.

16 That the contesting Respondents have not entered the witness box. From the record, it can be gathered that on 24<sup>th</sup> October 2013, the authorities of MPCB visited the site of the Rice Mill and the Training institute as per directions of this Tribunal. We had called upon the Regional Officer, Chandrapur to give the status Report. The status Report dated 28<sup>th</sup> October 2013 reveals following information:

A) The Sai Rice Mill is located very close to the residential building of President Lokmangal Sanstha (about 4.0 mtrs.). The institute main building is about 52.0 m away from the Rice Mill. The open well located in the premises of Lokmangal Sanstha is about 16.0 m away from the Rice Mill.

B) The noise level monitoring is carried out though the industry is not in operation, to assess the normal noise level within the premises of Lokmangal Sanstha. The readings are as follows :

- (a) 57.8 dB(A)    (b) 55.3 dB(A)    (c) 57.8 dB(A)  
(d) 56.9dB(A)    (e) 56.9 dB(A)    (f) 58.0dB(A)  
(g) 58.4 dB(A)    (h) 58.2 dB(A)    (i) 59.7 dB(A)  
(j) 60.0 dB(A).

From the above readings it is observed that, the normal noise level is within, 55.3 dB(A) to 60.0 dB(A).

C) The Rice Mill is located adjacent to the premises of Lokmangal Sanstha. The distance between the Wall of the Rice Mill and Wall of the building of residence of President Lokmangal Sanstha is about 4.0 mtrs.

D) The rice husk storage shed, roof was found damaged. The proprietor Shri Sanjay Waddetiwar informed that, due to heavy rain the roof has been damaged. He further informed that, before starting the mill the same will be repaired and open portion between roof and wall will be plugged.

E) About 5 to 6 Ton of rice husk was found stored outside the rice husk shed. The Proprietor Shri Sanjay Waddetiwar told that, the rice husk will be removed within 15 days.

F) During the Inspection, the consent copy was not made available. However, from the office records it is observed that they are having consent to operate valid up to 31/12/2008. The industry has submitted the application for consent to operate (Renewal) on 25-10-2013 at Regional Office, Chandrapur.



17 Perusal of the above report clearly indicates that the rice husk was found stored outside of the rice husk shed, though the Rice Mill was not in operation. So, it cannot be believed that when the Rice Mill is in operation, the husk totally falls within the enclosed area of the rice processing unit. It was also noticed that the roof of the rice husk storage shed was damaged. The proprietor of the Rice Mill informed the authority that due to heavy rains, the roof was damaged. Still, however, in spite of fact that the rainy season had been over at least 3-4 months back of the said visit, no steps were taken to repair the roof. The fact that the Rice Mill was not being operated, did not give any opportunity to examine the issue of noise pollution. The report is silent about the noise abatement measures implemented by the industry. We are surprised to see as to how same Sub Regional Officer of the MPCB Chandrapur observed that the normal noise level was within permissible units. It is nobody's case that even for temporary purpose the Rice Mill was made functional during the short duration of the said limits dated 24<sup>th</sup> October 2013. Another status Report dated 2<sup>nd</sup> December 2013 submitted by the Sub Regional Officer, MPCB Chandrapur is also dis-satisfactory. The Report shows that the Rice Mill was not in operation during the visit dated 22<sup>nd</sup> October 2013. The Report further shows that the old rice husk was under process of lifting. The representative of the Rice Mill (Shri Sanjay Waddetiwar) verbally informed that the maintenance of all the machinery including oil and greasing work was conducted.

We do not find whether the MPCB verified correctness of such information.

18 It is difficult to place implicit reliance of such top-sided status Report submitted by the MPCB. The Learned Counsel appearing for the Respondent Nos.1 and 4 submitted that rice husk is valuable by-product of the Rice Mill and immediately sold away to bran oil manufactures. He placed reliance on some payment receipts (D-14 to D-29). These payment receipts are for the period from 13-12-2011 to 1-1-2012. So also, these receipts do not indicate that the entire stock of the husk produce from the Rice Mill is sold to the Rice Bran Oil Manufacturer.

19 All said and done, it cannot be overlooked that due to proximity of the premises of the Rice Mill, there is more possibility that the husk separated from the grains after process of the paddy may flow away towards premises of the training institute run by the Applicant. The running of the Rice Mill causes constant pounding sound which also amounts to nuisance. Thus, the Applicant has made out a case of actionable nuisance. The MPCB has not has so far granted consent to operate the Rice Mill. Consequently, we find it necessary to ensure that without appropriate measures taken for arresting the air and noise pollution, the consent to operate may not be renewed.

20 Coming to the question of limitation, it may be noted that the application is transferred to this Tribunal and was originally a suit filed in the Civil Court. The suit was based on the cause of

action which was stated in the Notice issued U/s. 80 of Code of Civil Procedure. Moreover, running of the Rice Mill continued during the relevant period. The nuisance gave recurring cause of action. The suit was not barred by limitation. The continuity of the nuisance and air pollution as well as noise pollution amounts to continuity of cause of action. Hence, the suit cannot be deemed as barred by limitation.

21 In view of the foregoing discussion, we record our findings on the issues mentioned earlier as follows: Issue No.1 : No, Issue No.2 : Yes, and Issue No.3 : Yes.

22 In the result, the application is partly allowed with costs of Rs.25,000/- (Rs. Twenty five thousand only) each by the Respondent Nos. 1 and 4 to the Applicant Lokmangal Sanstha within period of four (4) weeks.

23 The Respondent Nos. 1 and 4(a) to 4(e) (Legal Representatives of deceased Respondent No.4) shall pay compensation of Rs.50,000/- (Rs. Fifty Thousand only) to Applicant Lokmangal Sanstha for causing noise pollution and air pollution during the period for which the Rice Mill was being operated, the amount which has been arrived at, has been founded on general assessment, having regard to the fact that the Rice Mill is a small unit and is a seasonal industry.

24 We direct that the MPCB shall not grant renewal of consent to operate the Rice Mill run by the Respondent Nos. 1 and

4(a) to (e) unless it is duly satisfied that adequate measures are taken by them to install modern equipment in order to control the noise pollution by way of proper insulation of the unit and to ensure that the chaff/husk will not flow outside the unit's premises. The Rice Mill shall install a conveyance system or conveyor belt to carry the chaff/husk to adequately covered cellar/storage from which it can be carried out for sell/disposal. Unless such facilities are adequately provided, the application for renewal of grant for consent to operate shall not be processed by the MPCB. In case the Rice Mill is found running without consent to operate or any breach of conditions envisaged in the consent to operate is noted, action under Section 31-A of the Air (Prevention & Control Pollution) Act 1981 may be taken by the MPCB against Proprietor.

The Respondent Nos.1 and 4 shall bear their own costs.

The Application is accordingly disposed of.

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

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