

2012 CLD 2032

[Environmental Protection Tribunal, Karachi]

Before Mrs. Ashraf Jahan, Chairperson and

Abdul Karim Memon, Member Legal

DIRECTOR-GENERAL, ENVIRONMENTAL PROTECTION

AGENCY, GOVERNMENT OF SINDH—Complainant

versus

SHABSIR AHMED, CHIEF EXECUTIVE

OFFICER—Respondent

Complaint No. 14 of 2010, decided on 9th June, 2011.

Pakistan Environmental Protection Act (XXXIV of 1997) ---

—Ss. 11 & 16— Release of untreated effluent— Environmental Protection Agency, keeping in view the potential impacts of Textile Mills on environment, due to release of untreated effluent, got the mill inspected by team of Environmental Protection Agency—Inspection Team collected the samples and on getting the wastewater tested, it was observed that the level of Biological Oxygen Demand (BOD), and Chemical Oxygen -Demand (COD) were in excess of, the National Environmental Quality Standards—Environmental Protection Order was issued directing for immediate stoppage of production process of the mill till installation of wastewater treatment plant—Period of establishment of the mill was only one month—Prosecution witness did not remember the colour of cooler in which samples of water in question were kept—Prosecution witness had given contradictory statement

in respect of ice used to cool the sample of water—In view of contradictory evidence of prosecution witnesses, who had gone to collect the samples, it had become doubtful as to whether the samples were kept at the required temperature or not'- Evidence of prosecution witness was also silent as¹ to whether the seats of sample bottles were intact or not and who had received the samples and where those were kept when received in the late night—No proper chain of custody was established by the prosecution in the case—Result as per certificate of test or analysis produced on record, contradicted the result as per other test report which reflected negligence on part of laboratory: and it appeared that care and caution was not taken by the laboratory at the time of issuing the certificate---No reliance could be placed upon vague and contradictory certificate---If anyone had failed to appear on part of the mill, then instead of issuing Environmental Protection Order to stop production forthwith, another opportunity should have been provided to mill— No one should be condemned unheard—Out of many spinning mills, only present mill had been targeted though it had submitted copy of treatment plant and ensured compliance of the same—Same policy should have been adopted towards the present mill Prosecution had failed to prove the charge against the mill beyond shadow of reasonable doubt—Mill having not been proved involved in contravention of Ss. 11, 16 of Pakistan Environmental Protection Act, 1997, Chief Executive Officer of the mill was acquitted in circumstances, [pp. 2033, 2039, 2041, 2042] A, B, C & D

Karim Nawaz Qureshi, Deputy District Public Prosecutor for SEPA.

Syed Shamim Hasan for Respondent/Accused.

By this judgment we will dispose of Complaint No. 14 of 2010 filed by the Director General, Environmental Protection Agency, Sindh under section 21(3)(a) of the Pakistan

Environmental Protection Act,. 4997 against Shabbir Ahmed. Chief Executive Officer, S.B. Textile Mill.

2. Brief facts leading to the present complaint are that the respondent is the in charge of operation of the S.B. Textile Mill located at Plot No.A-5, SITE Kotri, District Jamshoro. The Environmental Protection Agency, Sindh while keeping in view the potential, impacts of Textile mills on environment, due to release of untreated effluent, got this industry-inspected by a team of Environmental Protection Agency, Sindh vide order dated 1-2-2010. Accordingly the team collected the samples on 2-2-2010 and got the wastewater tested through an independent Environmental Protection Agency certified Laboratory. As per result it was observed that the level of Biological Oxygen Demand (BOD) and Chemical Oxygen-Demand (COD) were in excess of the National Environmental Quality Standards. In view of above analysis report the Director-General, Environmental Protection Agency, Sindh issued a notice dated 11-3-2010 for personal hearing on 16-3-2010 to the. Chief Executive Officer of S.B. Textile Mill but the management of the said mill failed to appear for personal hearing before, the Director-General, Environmental Protection Agency, Sindh. Therefore due to absence of respondent on 16-3-2010, the Director-General, Environmental Protection Agency, Sindh issued Environmental Protection Order directing for immediate stoppage of production process of the mill till installation of waste water treatment plant of appropriate technology.

3. It is further the case of the prosecution that on, receipt of non-compliance report in respect of Environmental Protection Order dated 16-3-2010, Director-General Environmental Protection Agency, Sindh issued another Environments Protection Order dated 23-4-2011.

4. It is alleged by the prosecution that since the wastewater generated by this mill was discharged in the environment without any in-house treatment being in excess of National Environmental Quality Standards, it was adversely contaminating the underground water quality and created nuisance for inland flora and fauna. Thus the management of S.B. Textile Mill had violated the sections 11 and 16 of the Pakistan Environmental Protection Act, 1997, hence this complaint.

5. On receipt of this complaint, process was issued against the respondent/accused for appearance before tribunal to face the trial. On 10-8-2010 the respondent appeared and copies of memo of complaint and all other relevant documents were supplied to him as exhibit-1. Formal charge against the present respondent was framed on 26-10-2010 as exhibit-2 under sections 11 and 16 of the Pakistan Environmental Protection Act, 1997 punishable under section 17(1) of the said Act, to which the accused pleaded not guilty and claimed for trial vide Plea as exhibit-3.

6. The prosecution in order to prove its case has examined complainant Naeem Ahmed Mughal, Director-General, Environmental Protection Agency, Sindh as exhibit-4, he has produced authorization order dated 1-2-2010 as exhibit-4-A, notice dated 11-3-2010 as exhibit-4-B, Environmental Protection Order dated 16-3-2010 as exhibit-4-C, another Environmental Protection Order dated 23-4-2010 as exhibit-4-D, memo of complaint as exhibit-4-E. P.W. Ziauddin Siddiqui Head Research Analytic Services is examined at exhibit-5, he has produced test report dated 10-2-2010 as exhibit-5-A, certificate of test or analysis dated 11-2-2010 as exhibit-5-B. P.W. Abdullah Magsi Chemist is examined as exhibit-6, he has produced industrial monitoring survey questionnaire/general information from respondent as exhibit-6-A, Form-B dated 2-2-2010 as exhibit-6-B, Form-C dated 2-2-2010 as exhibit-6-C. P.W. Ghulam Fareed, Environmental Inspector is examined as exhibit-7. P.W. Irfan Ahmed Abbasi, Assistant Director is examined as exhibit-8. While the P.W. Syed Muhammad Yahya, Director (lab) given up by the prosecution as exhibit-9 and the prosecution closed its side vide statement dated 2-12-2010 as Exhibit-10.

7. Thereafter the statement of accused/respondent under section 342, Cr.P.C. was recorded on 6-12-2010 as exhibit-11, he has produced sketch of mill as exhibit-11-A. The respondent/accused in his statement disclosed that he will examine Qadir and Qudus as witnesses in his defence but on 7-12-2010 the accused submitted application for not examining the defence witnesses and closed his side as exhibit-12. On the same day he filed statement along with copies of drawing of the mill, basic principle of humidification system in a spinning mill, test report by Global Environmental Laboratory, biological report of drinking

water being supplied to mill area, letter of thanks by respondent to Director-General Environmental Protection Agency Sindh received by Environmental Protection Agency, Sindh on 30-3-2010 for appointing Mr. Yahya as Scientist to guide factories, submission of Environmental Management Plan to the Director General Environmental Protection Agency, Sindh along with receiving stamp of Environmental Protection Agency, Sindh dated 20-5-2010, CD containing photographs of municipal sewerage water of different colonies falling upstream In K.B. Feeder. In order to ascertain the existing position respondent was directed to submit process flow sheet of the mill. The respondent submitted process layout and seven photographs on 12-2-2011. Thereafter the arguments of both the parties were heard on 22-2-2011 and the case was adjourned for Judgment on 1-3-2011.

8. However, on 25-2-2011 before the date of hearing, the respondent/accused submitted application for grant of time, praying therein that one month time may be allowed to the accused/respondent, as 90% work on Environmental Management Plan has been completed and remaining 10%work will be completed within one month.

9. The matter was taken up on 1-3-2011 when the case was dived for Judgment, the application for grant of time was entertained and the notice whereof was given to the DDPP, who has tendered his no objection for the grant of said application and on 1-3-2011 order was passed allowing time to implement the Environmental Management Plan as under:--

"Since the respondent has voluntarily showed his-willingness to implement and comply with the Environmental Management Plan, therefore, in view of ; no objection tendered by the DDPP, we allow the instant application and grant forty-five (45) days time to the respondent with direction to implement the Environmental Management Plan submitted by him by 15th April, 2011. On that date the respondent shall submit in writing implementation status report duly prepared through qualified independent environmental consultant before this tribunal. The above report will be subject to the verification from Environmental Protection Agency, Sindh as well as through qualified independent environmental consultant at the expensed of respondent. In case of failure, the respondent shall have to deposit an amount of Rs.5,00,000 (Rupees five lac only), as fine, before this tribunal.

On the scheduled date (i.e. 15-4-2011) the respondent/ accused filed implementation status along with test reports from two different laboratories.

10. On 15-4-2011 in order to confirm and verify the Implementation status of environmental management plan, the tribunal sent the copies of statement dated 15-4-2011 along with all relevant documents filed by the respondent/accused to the Director-General, Environmental Protection Agency, Sindh for verification, in respect of compliance of order dated 1-3-2011 and further Dr. Mirza Arshad Ali Beg, Adjunct Professor Environmental Research Center, Bahria University, Karachi Campus, was appointed as commissioner to visit the S.B. Textile Mill and to submit detailed report in respect of implementation status of Environmental Management Plan.

On 11-5-2011, Abdullah Magasi Chemist, Environmental Protection Agency, Regional Office, Hyderabad filed report, in compliance with the directions issued vide order dated 15-4-2011, mentioning thereto that the spinning mill is operational since 2010. The raw material is used in the form of cotton and final production is thread yarn and the intake of water source is from SITE Kotri. He further mentioned that the existing treatment plant has been upgraded and due to the Installation of effluent wastewater treatment plant It will reduce the load of pollution levels and after treating the wastewater from effluent wastewater treatment plant it discharges into main nala of SITE Kotri. He has observed that during the site inspection by EPA monitoring team It was found that the wastewater treatment plant has been Installed and seemed functioning and contained the following equipment's:-

Sr.#	Description	Quantity
1.	Add Dosing Tank HDPE, 1000 liters ,	1
2.	Poly Electrolyte Dosing Tank HDPE, 500 liters	2
3	Sludge Transfer Pump for Clarifier	1
4.	Nutrient Tank HOPE, 500 liters	1
5.	Interconnecting pipe, valves and fittings	1 lot
6.	Supply and installation of Electrical panel, board and cables up to all, motors Including cable trays etc	1 lot
7.	Twin Lobe Blower	1

8.	Bar Screen	2
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The Environmental Protection Agency, Sindh has also, produced the test report dated 6-5-2011 issued by Environmental Certified Laboratory Global Environmental Lab showing the results under the permissible limits of National Environmental Quality Standards.

12. On 11-5-2011 Dr. Mirza Arshad All Beg, commissioner submitted his report, mentioning therein that S.B. Textile Mill has no Environmental Management Plan, but have only waste water treatment Plant, which is effectively treating the combined effluent from the air conditioning and humidification units and the sewage and is effective in bringing down the pH, BODs, COD, TSS and TDS values to levels much below those recommended by National Environmental Quality Standards. It is further observed by the learned commissioner that the yarn production system at S.B. Textile Mills at Kotri is sufficiently organized and the process is simple. Maintenance of the facility by good housekeeping, however, is inadequate and calls for planning and organizing to improve the quality of environment at the mill as well as of the different components of the environment. He has further mentioned that the main pollution at the spinning mill is dust, which is being effectively controlled by the humidification system and wastewater is not a major issue at the spinning mills, installation and commissioning of a biological treatment plant has effectively resolved the issue and thus S.B. Textile Mills is no longer a polluting unit at SITE Kotri. But at the same time he has pointed out that it is mandatory for the project proponents to carry out an environmental impact assessment and incorporate Environmental and social mitigation actions as part of project planning, The respondent though has started functioning in the year 2010 but has not complied with the mandatory provision of section 12 of Pakistan Environmental Protection Act, 1997.

13. After receipt of verification reports from Environmental Protection Agency, Sindh as well as from Dr. Mirza Arshad All Beg, environmental consultant, copies were supplied to the parties and the matter was fixed for re-arguments.

14. We have heard the arguments advanced by the learned counsel for the parties and have perused the case record. Now the-points for determination before this tribunal are as

under:-

POINTS FOR DETERMINATION

1. Whether the S.B. Textile Mills has committed violation of sections 11 and 16 of the Pakistan Environmental Protection Act, 1997?
2. What should the order be?
15. Our findings with reasons on the above mentioned points are as under:--

FINDINGS

Point No. 1: Not proved.

Point No. 2: Accused Shabir Ahmed Chief Executive Officer of S.B. Textile Mills is hereby acquitted under section 265-H(I), Cr.P.C

REASONS

Point No. 1

16. As per complaint the allegations of violation of section 11 of the Pakistan Environmental Protection Act, 1997 are alleged against the respondent on account of samples collected on 2-2-2010. Before discussing the evidence for the sake of convenience and ready reference section 11 of the Pakistan Environmental Protection Act, 1997 is hereby reproduced as under:--

"Section 11 **Prohibition of certain discharges or emissions:**—(1) Subject to the provisions of this Act and the rules and regulations no persons shall discharge or emit or allow the discharge or emission of any effluent or waste or Air pollutant or noise in an amount, concentration or level which is in excess of the National Environmental Quality Standards or, where applicable, the standards established under sub-clause (1) of clause (g) of subsection (1) of section 6."

The bare reading of above-mentioned provision of law goes to show that it deals with the pollution, discharge, or emission of any effluent or waste or air pollutant or noise in an amount, concentration or level, which is in: excess of National Environmental Quality Standards.

17. As per case of prosecution the samples were collected on 2-2-2010 and the results revealed that the level of BOD and COD were in excess of National Environmental Quality Standards. In support of its Case in respect of charge under Section 11 of Pakistan Environmental Protection Act 1997, prosecution has examined P.W. Abdullah Magsi and P.W. Ghulam Fareed. P.W. Abdullah Magsi was the team leader; he categorically deposed that the samples were in three portions as A, B & C and 'B' sample was handed over to the in charge of the mill and the remaining two samples were retained by them. During his cross-examination he admitted that at the time of inspection it was informed that period of establishment of Industry is only one month. Regarding purchase of Ice he deposed that Ice was purchased from city of Kotri. However he did not remember the colour of cooler in which samples were kept when the evidence of other P.W. Ghulam Fareed is examined it reveals that he has given contradictory statement in respect of purchase of Ice and was also short of memory when colour of cooler was asked. The availability of ice is relevant in this case for the reason that as per "Sampling Procedures for Municipal and Industrial Effluent" issued by Pakistan Environmental Protection Agency Central Laboratory, for Environmental Analysis, Government of Pakistan, for checking BOD, sample is to be kept at 4°C and Its withholding time is 48 hours. In view of contradictory evidence of both P. Ws. who had gone to collect the sample It has become doubtful as to whether the samples were kept at the required temperature or not. Another controversy is about the sample number. Though P.W. Abdullah Magsi has deposed that 'B' sample was given to the in charge of the mill and this finds support with Form-B as It reveals that sample ID NO. EPA/ROH/66-B was given to the Chief Executive Officer of S.B. Textile Mill. But again perusal of Form-C reveals that sample bearing same No. as EPA/ROH/66-B is sent to PRD (PERAC) Laboratory, whereas their reports show sample number as EPA/ROH/66-c.

18. The P.W-Ziauddin Siddiqui .in present case examined on behalf of PERAC Lab has disclosed in his cross-examination that he had not conducted the test himself. His

evidence is also silent as to whether the seals of sample bottles were intact or not? Who had received the sample and where they were kept when, received fin the late night of 2-2-2010 by the Lab? Thus no proper- chain of custody is established by the prosecution in the present case. It is important to notice that the result as per certificate of test or analysis produced on record as exhibit-5-B., contradicts with the result as per test report exhibit-5-A. This reflects negligence on part of laboratory ai|4 it appears that due care and caution is not taken by the laboratory authorities at the time of issuing the certificate. Thus no reliance can be placed upon vague and contradictory certificate.

19. Now we revert to the evidence of complainant Naeem Ahmed Mughal, he has deposed that after receiving the results from Laboratory he provided an opportunity of hearing under section 16 of the Pakistan Environmental Protection Act. 1997 to the Chief Executive Officer of the mill but since he did not appear therefore he issued Environmental Protection Order on same date to stop the production process of the mill forthwith. The case of prosecution is silent about the service of notice dated 11-3-2010 upon the respondent. In our humble view if the respondent had failed to appear on 16-3-2011 then instead of issuing Environmental Protection Order to stop production forthwith another opportunity .should have been provided to him. It is established principle of law that no one should be condemned unheard.

20. It will not be out of place to mention here that it is an admitted position that at the time when the respondent mill was inspected it was disclosed that the age of mill is only one month. In the present complaint it is the case of respondent that they have been discriminated and out of many spinning mills only they have been targeted though .they have submitted copy of treatment plant and ensured compliance of the same. It will be pertinent to mention here that the Director-General Naeem Ahmed Mughal during his cross-examination has admitted that "It is true that to some factories Environmental Protection Orders were issued but later on withdrawn for the reason because, they complied with the direction in the Environmental Protection Order and later on they ensured that they have the treatment plants and they will make them more effective." In such circumstances we are of the

opinion that same policy should have been adopted towards the present respondent. In the present case learned counsel for the respondent has submitted that there are violations of mandatory rules such as rules 4(1), 7, 10(5) of the Sample Rules, 2001 etc. No plausible explanation is given by the prosecution side in this regard. Non-compliance of procedural rules and lapses in the process of collection of sample is a fatal blow to the case of prosecution.

21. As mentioned earlier in the present case the respondent has submitted that he may be allowed time to implement Environmental Management Plan, such time was granted vide order dated 1-3-2011. Mirza Arshad Ali Beg, environmental consultant has given his report in favour of the present respondent however at the same time he has pointed out violation of section 12 of the Pakistan Environmental Protection Act, 1997 but since at present the charges against the present respondent are only in respect of sections 11 and 16 of the Pakistan Environmental Protection Act, 1997, therefore, we refrain from giving any observations in this regard. Besides this the report of SEPA produced on 11-5-2011 is also on record wherein they have supported the case of respondent and have observed that the level, of pH, BOD and COD were found under the limits, of National Environmental Quality Standards.

22. In view of above discussion we are of the opinion that the prosecution has failed to prove the charge against the present respondent beyond the shadow of reasonable doubt. Point No. 1 is answered accordingly.

POINT NO.2

23. In view of our finding on Point No. 1, it is proved that the S.B. Textile Mill is not involved in contravention of sections 11 and 16 of the Pakistan Environmental Protection Act, 1997. Hence accused Shabbir Ahmed, Chief Executive Officer of S.B. Textile Mills is hereby acquitted in the present case under section 266-H(I), Cr.P.C. He is present on bail, his bail bond stands canceled and surety stands discharged.

24. However, this Judgment will not come in the way of Environmental Protection Agency, Sindh in case fresh proceedings are initiated against the respondent mill after

fulfilling the legal requirement in accordance with law.

25. Announced in open Court.

26. Given under our hand and seal of this Tribunal on this 9th day of June, 2011.

HBT/4/EPT

Complaint rejected.