

**2013 CLD 16**  
**Environmental Protection Tribunal, Karachi**

**Before Mrs. Ashraf Jahan, Chairperson and Abdul Karim Memon, Member Legal**

**DIRECTOR-GENERAL, ENVIRONMENTAL PROTECTION AGENCY, GOVERNMENT OF SINDH--**  
**Complainant**  
**VEYSUS**  
**FAROOQ GULZAR, CHIEF EXECUTIVE OFFICER, GULZAR OIL INDUSTRIES--Respondent**

**Complaint No. 17 of 2010, decided on 30th June, 2011.**

**Pakistan Environmental Protection Act (XXXIV of 1997)---Sections. 11, 16 & 17-- Environmental Samples Rules, 2001--"Release of untreated effluent---Main allegation was that the wastewater samples collected from the mill, were found beyond the limits of National Environmental Quality Standards---Environmental Protection Agency, initiated proceedings against the mill for violation of S.11 of the Pakistan Environmental Protection Act, 1997---Case of prosecution was that date of collection of wastewater sample was 9-2-2010, but the test report bore the date of receiving of samples as 15-2-2010 and customer reference number contradicted the number mentioned on Forms B & C---Said material contradictions had made the whole case of prosecution CLD 2013] Director-General, Environmental Protection Agency U. Farooq Gulzar as doubtful one---No details of procedure adopted by mill was disclosed in respect of manufacturing process, use of water and its alleged polluted discharge in the environment causing damage to the underground water quality---Prosecution had not brought anything in respect of service of notice on the mill---If representative of mill had failed to appear on the relevant date, another opportunity of hearing should have been afforded instead of issuance of Environmental Protection Order on the same date---Violation was in the case of mandatory provisions of Environmental Samples Rules, 2001 --Issuance of Environmental Protection Order without providing the copy of report and service of notice, appeared to be harsh and against the principles of natural justice--Prosecution had failed to prove the charge against mill beyond shadow of reasonable doubt---Chief Executive Officer of the mill was acquitted, in circumstances. (pp. 20, 21, 23, 24] A, B, C SL D \_ Karim Nawaz Qureshi, Deputy District Public Prosecutor for SEPA.**

**Muhammad Ali Tak Chhipa for Respondent /Accused.**  
**JUDGMENT**

**The present complaint is filed under section 21(3)(a) of the Pakistan Environmental Protection Act, 1997 by the Director-General, Environmental Protection Agency, Sindh against Farooq Gulzar, Chief Executive Officer, Gulzar Oil Industries.**

**2. The relevant facts as stated in the complaint are that the staff of Environmental Protection Agency, Sindh keeping in view the potential impacts of oil industry on environment due to release of untreated wastewater, inspected the above-named oil industry on 9-2-2010. The team of Environmental Protection Agency, Sindh collected samples of wastewater and prepared Form B. The samples of wastewater were analyzed and tested through an independent Environmental Protection Agency Certified Laboratory and it was observed that the level of Biological Oxygen Demand (BOD), Chemical Oxygen Demand, (COD), pH(acidic), Total Suspended Solids (TSS), Oil and Grease and phenolic compounds were in excess of the National Environmental Quality Standards.**

In view of the samples analysis report the Director General, Environmental Protection Agency Sindh issued a notice for personal hearing to the Chief Executive Officer, Gulzar Oil CUJ

18 CORPORATE LAW DECISIONS [Vol. XII Industries, District Jamshoro but the management of industry failed to appear before the Director General, SEPA. Therefore, due to non-compliance of the directive of the department and continuous violation of Pakistan Environmental Protection Act, 1997. Environmental Protection Order was served upon the Gulzar Oil Industries for immediate stoppage of production process of the industry vide Letter dated 13-3-2010. Subsequently on receipt of non-compliance report from the EPA, Regional Office, Hyderabad, Environmental Protection Order was reissued on 23-4-2010. It is further the case of complainant that the wastewater generated by this industry is discharged in the environment without any in-house treatment, and is adversely contaminating the underground water quality. Hence this complaint for contravening/violating sections 11 and 16 of the Pakistan Environmental Protection Act, 1997.

3. After receipt of this complaint notices were issued against the respondent/accused for appearance before tribunal to face the trial. The respondent/accused appeared on 19-9-2010 and copies of memo of complaint along with all annexures were supplied to him vide exhibit-1. Charge against the present accused was framed on 16-9-2010 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,

4. The prosecution in order to prove its case has examined complainant Naeem Ahmed Mughal, Director General, Environmental Protection Agency, Sindh as Exhibit-4, he produced copy of Notice dated 8-3-2010 as exhibit-4iA, Environmental Protection Order dated 13-3-2010 as exhibit-4-B, second Environmental Protection Order dated 23-4-2010 as exhibit-4-C and complaint as exhibit-4-D. P.W-Imran Ali Abbasi Assistant Director is examined at exhibit-5, he produced Form-B dated 9-2-2010 as exhibit-5-A, Form-C dated 9-2-2010 as exhibit-5-B. P.W-Irfan Ahmed Abbasi Assistant Director is examined at exhibit-6, he has produced Authorization Order dated 6-2-2010 as exhibit-6aA. P.W-Ziauddin, Siddiqui Head Research Analytic Services is examined at exhibit-7, he has produced test report dated 15-2-2010 as exhibit-7-A, certificate of test or analysis dated 24-2-2010 as exhibit-7-B. P.W-Muhammad Iqbal Environmental Inspector is examined as exhibit-8. The prosecution closed its side vide statement dated 22-12-2010 as exhibit-9. 2013' Director-General, Environmental Protection Agency v. Farooq Gulzar

5. The statement of accused under section 342. Cr.P.C. was recorded on 25-1-2011 as exhibit-10, as per his version they make oil, there is no wastewater and soap is made with the waste which is discharged during manufacturing process of cooking oil. It is further the case of the accused that the samples were taken from outside industry, wherefrom the water was going to sewerage line. Though during his statement he wished to examine Muhammad Imran as defence witness but subsequently made statement on 22-3-2011 that he could not produce defence witness, therefore, side was closed as exhibit-11. On 2-4-2011 the accused filed statement disclosing the details of production waste as under:-- "(1) Daily Production 15 Tons of Oil and Ghee.

(2) 1% waste is generated by the Daily Production i.e. 150 kgs.

(3) We sell 150 kgs to the parties who makes the liquid waste as soaps.

(4) In this Production no wastewater is generated.

(5) We use raw material for this production i.e. palm oil and canola oil (imported) not local.

(6) All the detail is also mentioned in my statement of respondent."

7. On 29-4-2011 this Tribunal in order to arrive at correct conclusion to meet the ends of justice appointed

Dr. Sami uz Zaman, Proprietor of Polychem Industries, Karachi as- commissioner to visit the Gulzar Oil Industries and to submit report in respect of environmental violations.

The commissioner submitted his report on 14-5-2011 with following conclusion:

(i) There is no solid waste to be disposed by any other method except selling to the re-user who make soap utilizing the oil wastes of every type.

(ii) There 'is no water which is used in the process and ' going to sewerage. The water used in oil washing is sold as liquid soap.

(iii) The water which goes to sewer line is all domestic water used in floor washing, kitchen and toilets.

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20 CORPORATE LAW DECISIONS (Vol. XII (iv) Overall the plant was found clean and no spillage was seen.

8. We have heard the arguments advanced by Mr. Karim Nawaz Qureshi Deputy District Public Prosecutor appearing for SEPA and Mr. Muhammad Ali Tak Chhipa advocate for the accused and have perused the case record. Now the points for determination before us are as under:--

**POINTS FOR DETERMINATION.**

(1) Whether Muhammad Farooq Gulzar, Chief Executive Officer of Gulzar Oily Industries has committed

violation of sections II and 16 of the Pakistan Environmental Protection, Act, 1997?

(2) 'What should the order be?

Our findings on the above-mentioned points are as 9. under:

**FINDINGS**

Point No.1 z Not proved.

Muhammad Farooq Gulzar, Chief Executive Officer, Gulzar Oil Industries is hereby acquitted under section 265-H(i), Cr.P.C. REASONS V

Point No.2 1

Point No.1 \_ 0

10. The main allegation against the present accused is that the wastewater samples collected from his industry were found beyond the limits of National Environmental Quality Standards, therefore, Environmental Protection Agency, Sindh initiated proceedings against Gulzar Oil Industries for violating the section II of the Pakistan Environmental Protection Act, 1997. In support of its case the prosecution

has examined complainant along with four witnesses. P.W-Imran Ali Abbasi Assistant Director and Muhammad Iqbal Environmental Inspector are the persons who had taken wastewater samples from the premises of respondent mill. According to their evidence the samples were collected on 9-2-2010 from outlet of Gulzar Oil Industry and on the same day samples were sent to PRD Laboratory along with

Form-C by Mr.. Irfan Ahmed Abbasi, who was Assistant Director, EPA, Regional Office, Hyderabad. Their evidence CU.) A 2013] Director-General, Environmental Protection 21 - Agency u. Farooq Gulzarfinds support with Form-C produced on record as exhibit-5-B, which shows that sealed parcel bearing No.EPA/ ROH/ 51/ B was received by the Laboratory on 9-2-2010. In this regard, it is submitted by the learned counsel for the respondent/ accused that samples as per case of prosecution itself is said to had been collected on 9-2-2010 but as per test report dated 24-2-2010 produced on record as exhibit-7-A the date of receiving is mentioned ,as 15-2-2010. not only this but the customer reference is also different. In this regard, he has pointed out that as per Forms-B and C sample number is EPA/ROH/ 51/ B, whereas in the test report sample number is mentioned as EPA/ROH/ 51/ C and these contradictions in respect of date of receiving of sample and reference number have made the whole case of prosecution as doubtful. Such question was also put in cross-examination from the complainant but he had no answer to this question and has simply stated that it may be clarified from the concerned witness. It is further submitted by the learned counsel for the accused that there are procedural lapses, the authorization order in this case was issued by Irfan Ahmed Abbasi, who is Assistant Director, SEPA not competent to issue authorization order, further there is non-compliance of section 10(5) of the Sample Rules, 2001, no copy of test report has ever been supplied to the respondent/accused and violations of these mandatory provisions of law are fatal to the case of prosecution. He has further submitted that neither in the notice dated 8-3-2010 nor in Environmental Protection Order any violation of environmental law is disclosed and without hearing the respondent/accused side Environmental Protection Order was issued on the same date. which is against the principles of natural justice.

11. Mr. Karim Nawaz Qureshi Deputy District Public Prosecutor for SEPA during the course'of his arguments has submitted that though there are some procedural lapses but the same will not come in the way of justice. Further in respect of contradictory dates of receiving of samples and identification numbers he conceded that it is mistake on the part of laboratory.

12. We have considered the arguments advanced by the learned\_ counsel for the parties and have perused the case record minutely. Admittedly as per case of prosecution the date of collection of wastewater sample is 9-2-2010 but surprisingly the test report bears the date of receiving of sample as 15-2-2010 and customer reference number also CLD.

22 CORPORATE LAW DECISIONS [Vol. XII contradicts with the number mentioned on Forms-B and C. These material contradictions have made the whole case of prosecution as doubtful one. P.W-Ziauddin Siddiqui, who is Head Research and Analytic Services was examined by the prosecution as exhibit-7 his evidence is hereby reproduced for ready reference: Examination-in-chief to Mr. Abdul Maroof, DDPP for EPA. Sindh I am working in PRD as Head Research Analytic Services. The samples were received on 9-2-2010 at the PRD lab. We got the testing done and issued such certificate, which I produce as Exhibit-7-A and say that It is same, correct and bears my signature. We have also issued Certificate of Test or Analysis, I produce the same Exhibit-7-B and say that it is same and correct. Cross-examination to Mr. Muhammad Ali Tak Chhipa. advocate for the respondent The samples were not collected by myself. I have not tested the samples. It is correct that receiving date in test report is mentioned as 15-2-2010. Voluntarily says the sample was received on 9-2-2010 but since complete parameters were not received from SEPA therefore the sample was preserved and after receiving the parameters from SEPA it was tested therefore the date is mentioned as 15-2-2010. It is correct that the fact regarding preserving the sample is neither - disclosed in, examination-in-chief nor it is stated in the report. It is correct that I have not disclosed in my examination»in-chief as to who had preserved the sample. It is incorrect to

suggest that it is not the sample dated 9-2-2010 and I have deposed incorrectly. Normally the sample can be retained for 24 hours without preservation. Cross-examination by the Court I see Exhibit-5-B and C and say that sample number is mentioned as 51~B. I see Exhibit-7>A i.e. test report and say that there is mention of customer reference as 51-C, voluntarily says it can be a clerical mistake."CU! B 2013] Director-General, Environmental Protection 23 Agency v. Farooq Gulzar

13. The perusal of above evidence reveals that it is silent in respect of different dates of receiving the samples and no plausible explanation is brought on record in this regard. Though during the cross-examination as reproduced above, it has 'been deposed that since complete parameters were not received from SEPA, therefore, the date of receiving on test report was mentioned as 15-2-2010 instead of 9-2»2010. Even if this explanation is accepted then also the 'date of receiving of samples will remain same and in any case' the date of receiving the samples cannot be changed. Further there is. no proof produced on record by the prosecution in respect of late submission' of parameters. It is also noticeable

that it is not denied that the samples were not received along with Form-C. therefore, this explanation seems be an after thought. It is also important that the perusal of exhibit-7-B, which is\_ certificate of test or analysis, it is mentioned that the wastewater samples were received on 15-2-2010 dispatched by S.M. Yahya, whereas the evidence of P.W-Irfan Ahmed Abbasi, Assistant Director goes to show that he had sent the samples to the laboratory along with Form-C directly on 9-252010 and this statement finds

support with the fixation of seal of laboratory showing the date of receiving as 9-2-2010 on Form-C. It is not understandable how the certificate of test and analysis discloses 'that samples were received on 15-2-2010 dispatched by S. M. Yahya and it creates doubt as to whether it was the same sample or some other sample, whose report has been produced on record. Thus the chain of custody is not established in this case.

14. It is also important to notice that the case of prosecution is silent and no details of procedure adopted by the accused is disclosed in respect of manufacturing process. use of water and its alleged polluted discharge in the environment causing damage to the underground water quality.

15. In the present case it is the case of respondent thatthey make oil and there is no discharge of wastewater, the liquid discharged- during this process is soap, which is sold to the parties.

16. In the present case to arrive at just decision we appointed commissioner, who gave his report, which was taken on record and as per his conclusion no water is used CLD

24 CORPORATE LAW DECISIONS IVol. XII in the process and the water used in oil washing is sold as liquid soap.,

17. The other allegation against the present accused is that inspite of issuance of notice dated 8-3-2010 for appearance before Director;General, SEPA on 13»3~2010 he had failed to appear before the Director General, therefore. Environmental Protection Order was issued on same date. In this respect it would be suffice to mention that the prosecution has not brought anything in respect of service of notice dated 8-3-2010 and in our humble opinion if he had failed to appear on the relevant date another opportunity of hearing should have been afforded to him instead of issuance of Environmental Protection Order on the same date. Furthermore there is violation of mandatory provision of section 10 of Sample Rules, 2001 and in such circumstances issuance of Environmental Protection Order without providing the copy of test report and service of 'notice appears to be harsh and against the 'principles of natural justice. In view of our finding mentioned above we are of the considered View that the prosecution has failed to prove the charge beyond shadow of reasonable doubt. Hence point No.1 is answered as not proved. A POINT\_ N0.2M y g A

18. In view of our finding on Point No. 1, it is established that the prosecution has failed to prove charge against the Farooq Gulzar, Chief Executive Officer of Gulzar Oil Industries. Hence accused Farooq Gulzar, Chief Executive Officer of Gulzar Oil Industries is hereby acquitted in the present case under section 265H(1), Cr.P.C. 19. Before parting with this judgment we may observe that the learned commissioner while submitting his report has pointed out that the respondent industry is using nickel in the process of hydrogenating and has also pointed out that as per National Environmental Quality Standards the nickel

is classified as toxic metal and its use in soap is controversial. So this aspect of the matter is to be examined by the concerned authorities. This judgment will not come in the way of Environmental Protection Agency, Sindh if any fresh proceedings are initiated against the respondent industry after fulfilling the legal requirements in accordance with law.

20. Announced in open Court. I. 2013] Muhammad Adnan v. Additional District Judge 25 [Sluyaat Ali Khan, J) 211 Given under our hand and seal of this Tribunal on this 30th day of June, 2011. HBT/5/EPT Complaint rejected.