

Comparative Analysis of Judicial Decisions of National Green Tribunal Evoking Polluter Pays Principle with Special Reference to Sugar Industries in India

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Abstract

Sugar industries are among the others the backbone to economic development of the country. It contributes to food security, employment generation, revenue collection and energy security in the form of electricity production using its by-product bagasse. Indeed sugar industries plays vital role in economic development but it also adversely affect the environment simultaneously. Proper way of operation and imposing laws and regulations and maintaining those strictly can reduce pollution level. The polluter pays principle is globally recognized phenomenon for the determination of compensation or penalty and attributing legal responsibility upon the pollutants. The National Green Tribunal (NGT or Tribunal) was established on three core principles i.e. sustainable development, precautionary measures and polluter pays principle. The decisions of National Green Tribunal are backed with polluter pays principle to deliberate on all the issues concerning environmental violations and determination of compensation. In this paper we are dealing with a comparative analysis of various judicial decisions of national green tribunal evoking polluter pays principle with special reference to sugar industries in India. The paper relies on certain factors for the estimation and calculations of compensation.

Keywords: Sugar Industries, National Green Tribunal, Polluter Pays Principle, Environmental Pollution and Compensation.

Introduction

Sugarcane is one of the main and conventional crops cultivated in India since time immemorial. We can trace the origin of cultivation of this crop dating back to 1000 to 300 BC. We have founded many evidences in our Indian religious texts like: Atharva Veda, Rig Veda, Manu Law Book etc. Alexander (325 BC) describes this crop as a "sweet reed". In Sanskrit it is called "karkara" and in Prakrit it is called "Sakkara". The Ancient Greek Doctors described the Sugar as "Indian Salt"¹.

Sugar Industry begins towards the end of 19th Century. The Government protected it under Indian Sugar Industries (Protection) Act 1932; there was a rapid development of sugar industry. A large number of factories were established in Uttar Pradesh and Bihar. During the year 1931-32, there were only 32 sugar factories in India which increased rapidly to 136 by 1935-36 with a production capacity of 9.47 lakh tons per annum. Unfortunately, there was no substantial development in sugar industry for a considerable period of time. Another phase of development began with the policy change by Five year plan system and after the Industries (Development and Regulation) Act, 1951 came into force in May 1951. Through this Act, it became binding on each entrepreneur to take a license from Government of India both for establishing and expansion of the new and existing sugar factories respectively. In the initial phase, the growth of the industry was in sub-tropical region of India comprising the States of Uttar Pradesh, Bihar, Punjab and Haryana. However, after 1950-51 the five year plans, large number of factories were also set up in tropical region also which comprises the States of Gujarat, Maharashtra, Andhra Pradesh, Karnataka and Tamil Nadu. The Data pertaining to the number

of Sugar Industries and Production of Sugar over the decades are shown in the Table 1.1 below:

| Year | Number of Sugar Industries | Sugar Production (in Thousand Tones) |
|-----------|----------------------------|--------------------------------------|
| 1950-1951 | 138 | 1101 |
| 1960-1961 | 173 | 3028 |
| 1970-1971 | 216 | 3740 |
| 1980-1981 | 314 | 5147 |
| 1990-1991 | 385 | 12046 |
| 2000-2001 | 436 | 18511 |
| 2010-2011 | 526 | 35440 |
| 2020-2021 | 532 | 41420 |

Table 1.1: Indian Sugar Industries over the years².

Aim of the Study

In this paper we shall be dealing with the policy measures and comparative study of various judicial pronouncements by the National Green Tribunal evoking polluter pays principle.

Review of Literature

An effort has been made to review the literature related with the research. It is concern of previous research made in the choosen topic. Literature review plays an important role in the research as it gives an insight to researchers knowledge. The review covers all round aspects of sugar industries such as operational and environmental impact. The data extraction are from Magazines, Journals, Notes, News Articles, Dissertations, Ph.D thesis, websites etc.

Prabhu, K. A.; Vaish, K. N³ in their article 'Environmental Pollution Control in Sugar Industry' clarifies and put an effort to find out the various sources of pollution in sugar industries and the effluents discharged from sugar factories in India. Their article also made an attempt to clearly describe the various effluents arising in a sugar factory in India and the approximate volume of wastes and pollution loads approximately 1250 tons/day. They also made some suggestions required to control pollution.

Chattarjee, A. C⁴ in his article 'Effluent and Environmental Pollution of Sugar Factory' gave an opinion about the effluent from the sugar factory that contain huge amount of wastewater in the form Biochemical Oxygen Demand (BOD) and Chemical Oxygen Demand (COD) which are dangerous to the environment can be made harmless by properly treating it before releasing into the drain and taking care to restrict the leakages of juice, massecuite, magma melt and molasses and bursting out of tanks containing these materials. Significantly large surface area is required on the ponding system, the oxidation of organic matter for the reduction of Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD) and suspended matter can be accelerated by combining both the aeration in channels and rapid oxidation by rotors.

A comprehensive document regarding the minimal national standards to be adopted by the sugar industry has been published by the Central Board for the Prevention and Control of Water Pollution. The document exclusively deals with the problem of pollution due to this industry. The

document also made an emphasis on the future plan of action which would provide technically and economically more reliable solution in regard to the control measures. The basic scope of the work involved in this document is related to: the identification of industry by manufacturing process, capacity, location, pollution control measures and cost of control measures⁵.

1. Kumar, Devendra⁶ in his article 'Anaerobic Treatment of Distillery Spent Wash Optimization of Technology', explains that an anaerobic waste water treatment process has been found suitable for reduction of Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD) loads in distillery spent wash. It is evident to note that in recent years new anaerobic processes have been developed for the treatment of industrial waste water. The basic biological processes in anaerobic technology have enabled us to reduce the Biochemical Oxygen Demand (BOD) load by 90 percent and Chemical Oxygen Demand (COD) load by 70 percent with production of biogas containing about 70 percent methane gas.

Potdar, S.D.⁷ has made an attempt to study on the working and impact of sugar cooperatives on the economic conditions of producer members. In this study the impact in respect of education, capital formation, consumption and cropping pattern has been carried out. The researcher has finally suggested certain measures to be adopted which would further enhance the economic conditions of producer members as well as employees of the sugar factories.

Unune, S. M.⁸ in his article 'Pollution Control Perspective and Endeavor an Effort towards a Clean Environment' is of the opinion that a campaign should be started to reduce the sugar factory effluent with the help of factory workers and other staff. The total quantity of effluent should be reduced by implant controlling. The effluent treatment plant should be worked with understanding and zeal.

Baru, Sanjaya⁹ in his book 'The Political Economy of Indian Sugar' is the first book on Indian Sugar Industries after independence. The examines how state interposition has helped turn the industry in terms of ownership patterns, demographical change, structural change, technical change, and the distribution of gains between the farmers and the mills. He shows how the sugar organization came to operate as a cartel and near oligopoly under the backing of the government also how problems of cane transportation have favored medium sized mills. It also show cases that how a modified "Cobweb" fix – flex model is best suited to explain the interplay on sugar prices in a regime of full or partial price control where there is pressure towards higher cane prices from cane growers and increasing resistance from sugar consumers. The book effectively explains how political considerations rather than economic criteria have come to dominate both the locational structure of the industry and the increasing importance of co-operative sector. The author has examined how these contradictory pressures have affected the economies of scale in the industry and the tendency towards both

modernization and diversification by the big business houses.

Jadhav, K.D.¹⁰ has made a study on 'Socio Economic impact of Sugar Cooperatives'. The researcher in this study examined the growth of membership, sugarcane cultivation, and production of sugar and sugar by products. The total funds rose by way of share capital. The employment generated and the contribution to rural development as reflected in the creation of fixed assets.

Kakade, V. B.¹¹ has made a study on capacity utilization of cooperative sugar factories. The researcher in this study explored the various reasons for the underutilization of capacity, such as lack of raw material, power failure, breakdown of plant and machinery. The researcher also found out the breakeven level capacity utilization.

Pruthi, S¹² in the book 'History of Sugar Industry in India' has made an attempt to rebuild the historical account of sugar producing factories in India. He has adopted a holistic approach to the following issues: Sugar Industry under East India Company and the British Government, Factors responsible for the growth of sugarcane industry, Role of research in sugar cane development, Development of process for sugar making and the historical and cultural significance of sugar industry. The book concludes with a chapter in problems and prospects of sugar industry.

National Green Tribunal and Polluter Pays Principle

In the 186th Report of Law Commission of India, September 2003 *inter alia* made a recommendation to set up a dedicated environmental court for both original and appellate jurisdiction. Thereby National Green Environmental Tribunal Act 1995 and National Environmental Appellate Authority 1997 were repealed by National Green Tribunal Act 2010. It was founded on 18th October, 2010 under article 21 of the Indian Constitution which guarantees the citizen of Indian the right to healthy environment. India is the third country following Australia and New Zealand to have such environmental court. The Tribunal is a Quasi-Judicial body comprising of Judges and Environment Expert. The Tribunal is empowered to grant relief, compensation and restitution to the victims of pollution, restitution of property

damaged and restitution of environment as the Tribunal thinks fit. The Tribunal is also empowered to exercise appellate jurisdiction from the order of the appellate authority under the Water and Air Act etc. as contemplated under Section 16 of NGT Act 2010. The decisions of Green Tribunal are unique and innovative. It is also relevant to note that only on the substantial question of law the orders of the National Green Tribunal, lies only to the Supreme Court of India, relating to environment which is similar to the powers granted under Section 100 of the code of civil procedure.

The Organization for Economic Co-operation and Development (OECD) introduced the polluter pays principle in 1972 in a recommendation as one of the guiding principles concerning the international economic aspects of environmental policies¹³. The polluter pays principle initially was a principle of economic policy stating that the polluter is responsible for the cost of pollution prevention and control measures.⁶

The National Green Tribunal has used the Polluter Pays Principle to deliberate on matters of environmental violations and determine a cost for such actions. The cases involve a variety of issues, including violating requirements of statutory environmental clearances and permits causing environmental harm, violations of environmental clearance conditions and permits, pollution from industrial activities and non-compliance with specified pollution standards, impact on communities and other matters related to pollution. The study will rely on certain parameters for evaluation, such as the penalty or compensation arrived at, the scientific and technical approaches used to calculate penalties, the directions NGT is following and whether the use of the Polluter Pays Principle is guiding better environmental practices. This analysis will throw light on the use of this Principle by the Tribunal and key shortfalls and challenges.

Comparative Analysis of Judicial Decisions Evoking Polluter Pays Principle

The summary of various landmark judgments are shown in Table 1.2 below:

| S. No. | Case Name | Main Issue(s) | Key Law Points | Penalty Amount |
|--------|---------------------------------------|---|---|---|
| 1. | Hazira Macchimar Samiti ¹⁴ | 1. Impugned Order of Environment Clearance 2. Environment Destruction of Mangroves. 3. Illegal Expansion of Ports. | 1. Impugned Environment Clearance is set aside. 2. Compensation & Restoration under rule 36 NGT (Practice & Procedure) Rule, 2011. | Rs.25 Crore |
| 2. | Sunil Kumar Chugh ¹⁵ | 1. Illegal Constructions and Violation of Environment Laws. 2. Is non-provision of recreational grounds & parking areas was violation of Article 21. | 1. Held Liable for violation of the Environment Protection Act, 1986. 2. Recreational & parking grounds are a crucial part of an individual's Fundamental Right to Life. | Rs. 3 Crore to ERF and Rs. 32,63600 to MPCB |

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|-----|---|--|--|--|
| 3. | Goa Foundation ¹⁶ | <ol style="list-style-type: none"> 1. Illegal Mining in Goa. 2. Challenge to the Report of the Justice Shah Commission. 3. Intergenerational equity of mining benefits Environmental Impact. | <ol style="list-style-type: none"> 1. Sustainable development and Intergenerational equity 2. Earning of a leaseholder was the consideration for calculating penalty. | Mine Leaseholders to pay 10% of their sale proceeds towards Goan Iron Ore Permanent Fund |
| 4. | Krishan Lal Gera ¹⁷ | <ol style="list-style-type: none"> 1. Construction without Environment Clearance. 2. Violation of Environment (Protection) Act, 1986. | <ol style="list-style-type: none"> 1. Section 16 of NGT Act, 2010 2. Section 19 of Environment Protection Act, 2010 | The project proponent shall pay 5% of total cost of the project Rs. 6.8855 Crores and Rs 5 crores for violating laws |
| 5. | Sterlite Industries (India) Ltd ¹⁸ | <ol style="list-style-type: none"> 1. Environment Clearance challenged before Madras High Court. 2. Failure to take Safety measures in plant. | <ol style="list-style-type: none"> 1. Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 2. Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. 3. Section 3 of Environment Protection Act, 1986. 4. Section 25- FFF of the Industrial Disputes Act, 1947 | Rs. 100 Crores |
| 6. | The Forward Foundation ¹⁹ | <ol style="list-style-type: none"> 1. Unauthorized Construction in SEZ (Special Economic Zone). 2. Construction without prior Environment Clearance. 3. Serious 4. Environmental damage and encroachment on wetlands and storm water drains. | <ol style="list-style-type: none"> 1. Section 14 and 15 of the NGT Act. 2. Water (Prevention and Control of Pollution) Act, 1974. 3. Air (Prevention and Control of Pollution) Act, 1981. 4. Rule 4 of Wetlands (Conservation and Management) Rules, 2010 5. Section 66 and 79 of Mines Act, 1952 | NGT imposed Fine of 5% of total project cost of Rs. 117.35 Crore on Mantri Techzone Pvt. Ltd. And 3% fine of Rs.13.5 Crore on Core Mind Software Services Ltd. |
| 7. | S.P. Muthuraman ²⁰ | <ol style="list-style-type: none"> 1. Unauthorized 2. Construction by seven builders. 3. Construction activities on the basis of ex-post facto Environment Clearances. | <ol style="list-style-type: none"> 1. NGT considered two office memorandums of the MoEF&CC issuing ex-post facto ECs to be ultra vires. 2. Held liable for violating Environment Protection (EP) Act of 1986. | Total Rs. 76 Crore fine by seven developers (each at 5% of their project cost) |
| 8. | Manoj Misra ²¹ | <ol style="list-style-type: none"> 1. Unrelenting encroachments and Industrial effluents on Yamuna river flood plain. 2. Illegal and indiscriminate dumping of solid in the river bed of 3. Yamuna. | <ol style="list-style-type: none"> 1. Polluter Pays Principle | NGT imposed liability to pay Rs.5 lakh on the violator. |
| 9. | Ajay Kumar Negi ²² | <ol style="list-style-type: none"> 1. Damage to the forest cover due to construction of a hydroelectric project. 2. Violation of Environment Clearance conditions. | <ol style="list-style-type: none"> 1. Polluter Pays Principle 2. Violation of Environment Protection Act, 1986 | Rs. 5 Crore |
| 10. | Krishan Kant Singh ²³ | <ol style="list-style-type: none"> 1. Releasing harmful effluent from Simbhaoli Sugar mill and Distillery and 2. Gopal Ji Dairy in River Ganga. | <ol style="list-style-type: none"> 1. Restoration of the area. 2. Polluter Pays Principle | Rs. 5 Crore fine paid by Simbhaoli Sugar Mills and Rs 25 Lakh paid by Gopaljee Dairy Pvt. Ltd |

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|-----|--|---|---|--|
| 11. | Naim Sharif Hasware ²⁴ | 1. Environment Violations by flouting EIA steps. 2. Mudflats and Mangroves destroyed. | 1. Violation of Environment Protection Act, 1986 | Rs. 50 Crore |
| 12. | Sarav Shikshit Evam Berojgar Janhit Sangharsh Samiti Barmana ²⁵ | 1. Cement company is causing air and water pollution. | 1. Violation of Environment Protection Act, 1986. | Rs. 50 Lakh |
| 13. | Krishan Kant Singh & Ors ²⁶ | 1. Substantial quantity of effluent was generated and discharged it into the river Kali. | 1. Section 5 of the Environmental Protection Act, 1986. | Rs. 1 Crore |
| 14. | DSM Sugar Distillery Division ²⁷ | 1. Releasing poisonous smoke in the atmosphere 2. Untreated effluents on the land 3. Ground water pollution | 1. Violation of Environment Protection Act, 1986 | Rs. 1 Crore and Rs. 10 lakh bank guarantee |
| 15. | Krishan Kant Singh ²⁸ | 1. Polluting Ganga 2. Ground Water and Air Pollution | 1. Violation of Environment Protection Act, 1986 | Rs 25 Lakh |

Finding

1. There is a lack of clarity and inconsistency in the determination of compensation.
2. There is no clear scientific and estimation method used to calculate the compensation.
3. It is evident from the cases that the tribunal has sometimes applied "guesswork" in the determination of compensation.
4. It is also evident that the tribunal has relied on old, unscientific and inappropriate case precedents.
5. There is low deterrence to the pollutants.
6. The payments were not made immediate and were stalled for years.

Conclusion and Recommendations

It is pertinent to note that our environment is getting polluted because of the mixing of particulates, biological molecules and other harmful materials. Such pollution affects health and environmental threat. Wastes from effluents from distillery attached to a Sugar industry came up for consideration and is a most serious problem of the current time in India. Huge amount of wastes produced by sugar industry on daily basis are polluting the whole ecosystem to a great extent. If the environmental protection policies are not followed seriously and strictly, it will increase at dangerous level. The NGT has imposed a fine on various sugar industries specially by applying the theory of Polluter Pay Principle observing violations of statutory requirements for carrying out activities, which in turn had affected environment and ecology misbalance, but the problem still persists.

It's been a decade when a revolutionary environmental court "NGT" was established to curb the arrogant and money maniac industrialist who were polluting the environment in the name of development.

The NGT had initially put full-fledged efforts to deal with complex and technical scientific matters involving environment pollution. With the

compositions of both judicial experts to the technical experts, the NGT has adjudicated and imposed heavy penalty on the potential pollutants. However, as evident from the summary provided in this paper we can conclude that there are huge inherent flaws in the calculation and methodology in the determination of compensation. The NGT also did not follow the benchmark of five percent of project cost as stated in the *Goa Foundation Case*. We want to humble submit that NGT should consult with other concern authorities and civil societies working in the environment protection in framing objectives and thereby compelling with-it leads to the sustainable development.

Endnotes

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