BEFORE THE NATIONAL GREEN TRIBUNAL

(SOUTHERN ZONE)

Appeal No. 5 (SZ) of 2020

M/s Yashaswi Fish Meal and Oil Company …Appellant

Vs

Union of India and others …Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT

Brief facts

1) The Appellant is a partnership firm dealing with fishmeal and fish oil industries in Pithrody village of Udyavara, Udupi Taluk and District. The Appellant's firm was established in the year 2008. The Appellant's firm initially started in a small way and subsequently the Applellant by their sheer hard work and years of toil and meticulous business planning and execution, managed to develop and improve the business to a great extent that at present the fish meal and fish oil producing unit of the Appellant is one of the leading fishmeal and oil producing units of the country. The Fishmeal and Fish oil unit established by the Appellant is located in Sy.No. 110/15.110/9C2B2, 110/4A, 110/9C2B1- P1, 9C2B1-P2 and 110/5B of Pitrody Village Udayavara Taluk.

2) The Appellant had set up the above referred industrial unit in the aforesaid properties after obtaining the necessary licenses, permissions from all the concerned authorities including the Pollution Control Board, Gram Panchayat and the Coastal regulation authorities. The Appellant submits that before establishing the industrial unit, they sought for an NOC from the Tahsildar, Udupi Taluk for conversion of the land from agricultural to industrial purposes. The Tasildar's office in turn had sought an opinion from the Karavali Control Range vide letter SI No. ALN CR744, 800/06-07 dated 02.03.2007 and the Regional Director (Environment) Udupil vide his communication dated 16.03.2007 in SI No.D.F 74 75/2006-07 stated that ""*the place sought for conversion is 101 meter far from the high tide line and in this area the width of the stream is less than 300 meters, it is outside the limits of Karavali Control Range"* and added that *"the Karavali Control Range has no objection to convert the lands bearing survey number 110/9C2B measuring 0.08 acres, 110/5B measuring 0.56 acres, 110/15 0.20 acres, 110/4A measuring 0.49 acres, 110/15*

measuring 0.17 acres, 110/9C2B measuring 0.19 acres, 110/5B measuring 0.21 acres and 110/21C2BP2 measuring 0.39 acres situated at Udyavara Village, Udupi Taluk for industrial purpose" [**ANNEXURE B filed along with the appeal**]. Further, Discharge License has been obtained from the Karnataka State Pollution Control Board and renewed periodically thereafter.

3) The Appellant submits that in and around the area where the fishmeal and fish oil manufacturing unit of the Appellant is located there are several other similar industries. The area where the manufacturing unit of the Appellant is located falls within the industrial zone as per the Zoning Regulations of Development authority of Udupi. In spite of complying with the requirements of law, rival businessmen and local politicians are causing hindrance to the business of the Appellant and have preferred various false, collusive complaints against the Appellant before various authorities including one application before this Hon'ble Tribunal.

4) The Appellant submits that on 10.03.2017 [**ANNEXURE C filed along with the appeal**], the 3 Respondent addressed a communication in Rde/SR/Yashaswi/01/2016-17/1016 to the Appellant whereby he stated that when the Karavali Control Range was being enquired on spot Mahazar dated 14.02.2017, he noticed that a building of the Appellant was within the CRZ I zone and sought information on the NOC obtained by the Appellant. The Appellant replied to the said communication vide reply dated 21.03.2017 [**ANNEXURE D filed along with the appeal**] and stated that no such inspection of the Appellant's industry took place on 14.02.2017 and stated that since no buildings were constructed in CRZ I there was no requirements to obtain an NOC from the authorities concerned.

5) Subsequent to the communication issued by the 3rd Respondent, the Appellant received a notice in No FEB 187 SRZ 2017 dated 14.09.2017 [**ANNEXURE E filed along with the appeal**] from the 2nd Respondent whereby the Appellant was informed that the industrial building of the Appellant situated in Sy. No 110 of Udyavara village is within CRZ Zone-1 and that this fact was noticed by the 3rd Respondent on 14.02.2017 during his inspection The said communication further went on to state that since there is no scope for establishing new industry in CRZ 1, the expansion of the industrial building in Sy No.110 violates para 3(iii), CRZ 81 CRZI (i) of the Coastal Regulations Zone notification, 2011. The communication further stated as to why a direction u/s 5 of the Environment Protection Act should not be issued for vacating the illegal construction and sought the Appellant's response on the same. The Appellant issued his reply to the above said communication on 09.10.2017 [**ANNEXURE F filed along with the appeal**] and stated in brief that i) no expansion was made by the Appellant contrary to any provisions of law, ii) the industry does not fall within the Coastal Regulation Zone and such allegation is false and baseless

and iii) neither any inspection was held as on 14.02.2017 nor any notice issued to the Appellant regarding such inspection.

6) The Appellant submits that the 2nd Respondent without holding any enquiry or surveying the area and verifying the documents of the Appellant in the matter, issued a communication dated 15.03.2018 [**ANNEXURE F filed along with the appeal and the 'Impugned Direction'**] purporting to exercise its power conferred under Section 5 of the Environment Protection Act and observed that the Appellant has violated the CRZ Notification 2011 by expansion of the fish processing plant adjacent to the High Tide Line (HTL) of the Udyavara river in CRZ I area and directed the Appellant to demolish the portion of fish processing unit which is constructed within 100 meter from the high tide line of Udyavara village of Sy. No 110/9C2B,110/5b,110/15,110/4a, 110/2c2bp2 immediately. None of the points addressed by the Appellant were even adverted to nor were there any reasoning given for rejecting the submissions of the Appellant made in its reply dated 09.10.2017. The impugned direction was a mere mechanical reproduction of the proposed direction issued on 14.09.2017.

7) The Appellant is thus highly aggrieved by the direction issued by the 2nd Respondent and thus preferred this Appeal on the following grounds:

Legal Submissions

The impugned direction of the 2nd Respondent invalid as per law

a) The impugned direction was issued in gross violation of the principles of natural justice. The impugned directions was issued without conducting any enquiry or verification of the documents of the industrial area of the Appellant or even adverting to any of the submissions made by the Appellant in its reply dated 09.10.2017. The letter dated 10.03.2017 of the 3 Respondent states that on enquiry of the Karavali Control Range, the illegal construction in CRZ area was detected. The said letter has the spot Mahazar date mentioned as 14.02.2017. However, no such enquiry was conducted on 14.02.2017 or on any other day. The Appellant addressed a reply to the said letter on 21.03.2017 stating that no enquiry was conducted on 14.02.2017 or on any other day and stated that since the industry is beyond the CRZ area, the authorities themselves had observed that no NOC was required from the Authorities. Subsequently, neither in the letter dated 14.09.2017 from the 2nd Respondent nor in the Impugned directions dated 15.03.2018, the Respondents have produced the enquiry report or Spot Mahazar on 14.02.2017 as claimed. Besides, the Respondents have not produced any proof of having put the Appellant on notice for conducting the enquiry. The 2nd respondent ought to have held an enquiry with local inspection and verification of the Appellant's records and documents after putting the Appellant on notice. However, the impugned direction has been issued without conducting

a proper enquiry of the Appellant's industry as contemplated by law and thus is liable to be set aside.

b) The Judgment of National Green Tribunal Principal bench **in Application No. 49 of 2012 M/s. Sesa Goa Ltd & Anr. Vs. State of Goa & Ors.** decided on 11th April, 2013 wherein the Tribunal while considering similar issue stated the necessity para 17 " *for recording of such reasons on the one hand and its consequences thereof on the other".*
Para 18. "*Of course, reasons recorded by such authorities may not be like judgments of courts, but they should precisely state the reasons for rejecting or accepting a claim which would reflect due application of mind".*

The impugned order of the 2nd Respondent is legally incorrect

a) The impugned directions issued by the 2nd Respondent are vague and misleading. Vide the impugned directions, the Appellants have been directed to demolish that portion of the fish processing unit which is purportedly within 100 mts from the HTL of Udyavara village in Sy.No.110/9c2b, 110/5b, 110/15,110/4a, 110/15, 110/9c2b. 110/5b, 110/2c2bp2 immediately. The 24 Respondent has thus not identified and fixed the portion of the building that is allegedly constructed within the CRZ area. This clearly indicates that no enquiry has been conducted by the authorities so as to determine that portion of the building allegedly constructed within CRZ . If an area is said to have been expanded or constructed in the Coastal Regulation Zone 1, the 2nd Respondent ought to have identified the area through an inspection and marked the dimensions that are allegedly constructed in the prohibited zone. Failing to do so, there is clear non-application of mind on the part of the 2nd Respondent and the impugned directions are vague and ought to be set aside on this ground alone.

b) Further, the impugned directions lack material particulars and reasoning. An order that has an adverse impact ought to be a speaking one complying with the principles of natural justice. However, the impugned directions provide no information or reasoning on why the reply addressed by the Appellant has not been considered and why a different view was adopted by the Authorities. The Appellant addressed his reply to the notice dated 14.09.2017 on 09.10.2017 and submitted that (i) no expansion was made by the Appellant contrary to any provisions of law, (ii) the industry does not fall within the Coastal Regulation Zone and such allegation is false and baseless and iii) neither was any inspection held on 14.02.2017 nor any notice issued to the Appellant regarding such inspection. The 2nd Respondent ought to have produced proof of having conducted a proper inspection/enquiry in compliance with law and ought to have given reasoning on why the stand or statement of the Appellant is not acceptable. However, the impugned directions thereby state that the Authority has perused the replies and concluded that there is an expansion of the industrial unit within CRZ area. No reasoning whatsoever is available in

the Impugned directions. Even in the Statement of Objections filed in WP No. 14808 of 2018 by the 2nd Respondent before the High Court of Karnataka, it was submitted that since the Appellant's replies were not convincing, the authority initiated action in accordance with law. Though a counter affidavit cannot supplement the impugned order, nevertheless, the same is bereft of particulars and reasoning. Thus, the 2nd Respondent does not have a reasoning or explanation for initiating action by issuing the impugned directions. Thus, the impugned directions lack reasoning on why the authority has arrived at the conclusion that the Appellant has violated the CRZ notification. Thus the impugned directions clearly do not comply with the principles of natural justice and ought to be quashed.

c) In the case of *Appeal No 30 of 2013 in the National green Tribunal Principal* ***bench Ashish Rajanbhai Shah v. Union of India*** Para 27 states that *"An administrative authority and Tribunal are obliged to give reasons and absence whereof could render the order liable to judicial chastise. The order passed by the authority should give reasons for its consequences and must show proper application of mind. Violation of either of them could in the given facts and circumstances of the case vitiate the order itself. An order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between an order passed by administrative authority or a quasi-judicial authority has practically extinguished and both are required to pass well reasoned orders".*

Para 30 states that *"Recording of reasons even help in balancing the question of onus. If the order records reasons which reflect satisfaction, then the onus is on the person challenging it to show that such reasons are unsuitable and improper. But in absence of such reasons the applicant discharges primary onus only by raising a challenge against such an order and such challenge could include non-recording of reasons, non-application of mind and patent arbitrariness. Then it is for the authority concerned to meet such challenge and to show that there were valid grounds in passing the impugned order. In the present case, the order does not contain any reasons, furthermore nothing has been reflected by the respondent on the file of the Tribunal to show that there were any plausible reasons to the explanation rendered by the appellant" and had subsequently allowed the said appeal and set aside the impugned order.*

In the case of ***S.N. Mukherjee v. Union of India and Ors (1990) 4 SCC 594***, the Supreme Court held that *'failure to give reason amounts to denial of justice.'*

In the case of ***Ravi Yashwant Bhoi v. District Collector (2012) 4 SCC 407***, the Hon'ble Supreme Court held that '*One of the salutary requirements of natural justice is speaking out of the reasons for the order made'*.

d) It is further to be noted that the Impugned Direction is purely mechanical and is nothing but a reproduction of the proposed direction dated 14.09.2017. The impugned direction does not deal with any of the submissions of the Appellant and merely replicates the proposed direction issued. Thus, there is clear non application of mind on the part of the 2 Respondent and the impugned direction ought to be set aside as arbitrary.

e) The Appellant was not given an opportunity of hearing before a decision was taken by the Respondent to give directions under the Impugned Direction.

f) The Western Zone Bench of the Hon'ble National Green Tribunal has held the following in the case of ***M/s Champ Energy Ventures Pvt Ltd v. Ministry of Environment and Forests and Others [2014 SCC OnLine NGT 175]:***

"Perusal of the record shows that the Applicant was not given opportunity of hearing before taking any decision by the CPCB to give directions under Section 5 of the Environment (Protection) Act, 1986. It is well settled that fair play and principles of natural justice require the authority to follow the principles of audi alterm partem. Obviously, it is necessary to hear the party, which is likely to be affected before passing of any adverse order. In other words, before directing the Applicant to recall the Gensets or stop manufacturing or close down the business, the CPCB is required to give Notice of hearing to the Applicant. The Applicant shall go before the CPCB and submit representation and thereafter, personal hearing shall be given by the CPCB to the Applicant before taking final decision in the matter that will be requirement of administrative decision-making process."

In the case of ***Mohinder Singh Gill and Anr v. The Chief Election Commisioner, New Delhi and Ors (1978) 1 SCC 405***, the Hon'ble Supreme Court held that '*the audi alterem partem rule has a few facets two of which are (a) notice of the case to be met; and (b) opportunity to explain*.'

In the present scenario, the Appellant was not afforded an opportunity of hearing before the Impugned Direction was passed and therefore, the same ought to be set aside.

Status reports filed by the special director (Technical cell) Department of forest, Ecology and Environment

a) It is to be noted that the present Appeal was filed by the Appellant to set aside the Impugned Direction dated 15.03.2018 in No. Fee 187/CRZ/2017 by the 2nd Respondent under Section 5 of the Environmental protection act. It is submitted that the Hon'ble Tribunal has given

interim order of stay on 20.02.2020 against the execution of the impugned order dated 15.03.2018 in No.FEE 187/CRZ/2011 issued by (KSCZMA).

b) It is submitted that the Director (Technical Cell), Department of Forest, ecology and environment filed two status reports dated 02.03.2021 and 24.04.2021 pertaining to the direction dated 15.03.2018 stating that the Appellant have undertaken expansion of the fish processing plant in Sy.110 of Udyavara Village adjacent to HTL of Udayavara river were such activities are prohibited under para 3(i) and 3(iii) of CRZ Notifications and that a Section 5 Direction has been issued by the KSCZMA to the Appellants to demolish the portion of building falling under CRZ area. In the status report dated 24.04.2021, it was states that the *'Authority has given the NPD to M/s Yashaswi Fish Meal & Oil Company for expansion of fish processing unit at Sy. No. 110 of Udyavara village & have received the same given the reply to this notice on 09.10.2017. Further, the final notice was also given to the correct address of the appellant and they have received the same & have filed W.P. No. 1408/2018, the Hon'ble High Court of Karnataka.'*.

c) The Appellant has filed response to the status report filed by the special director (Technical Cell) stating that the entire fish processing unit was established only after proper obtaining necessary permissions from the component authority and the expansion of the fish processing unit does not fall under the CRZ and there is no need to demolish the portion of land since the Appellant's building does not fall within the CRZ area. **The Appellant also filed the map of the Appellant's premises as Annexure A to the replies filed in response to both the status reports which shows that the processing unit falls outside the CRZ map.**

In the case of **Mohinder Singh Gill and Anr v. The Chief Election Commisioner, New Delhi and Ors (1978) 1 SCC 405**, the Hon'ble Supreme Court in para 8 held that '*When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise'*.' In the present case the authorities are attempting to supplement the reasons through these status reports.

<u>Statement of Objections filed by the Respondents No. 5,6,7 and 8</u>

a) This Hon'ble Tribunal after granting stay permitted the Respondents 5,6,7 and 8 who are residents of Udayavara Village Udupi to contest the appeal and file their objections and the respondents of the village filed their statement of objections the objections filed by the residents were just a repetition of the allegations made in OA 27 of 2019 filed by Mr. Kishore Kumar the resident in the said village and a friend to the respondents 5-8 and also stating the appeal filed by the appellants are barred by time and is to be rejected on limitation point .

b) The Appellants had filed their reply to the statements of objections filed by the respondents 5-8. The objections are just a repetition of the Applications filed in OA 27 of 2019 filed by Kishore Kumar. Therefore, the reply affidavit filed by the Appellant herein in OA 27 of 2019 has been filed as a part of the annexures [**Annexure A to the Reply to the Statement of Objections**] to the reply to the objections.

c) Against the allegation that the Appellant is using prohibited firewood and coal to run the unit, the Appellant has filed the permit for transportation of firewood [**Annexure B to the Reply to the Statement of Objections**].

d) The Appellant had obtained license from Udyavara Gram Panchayat on 09.-6.2007 which was cancelled by the Gram Panchayat. The Appellant has obtained a stay against such cancellation from the Hon'ble High Court of Karnataka. [**Annexure C to the Reply to the Statement of Objections**].

e) Regarding the allegation that the villagers have issued a letter to the Gram Panchayat, udyavara not to issue any trade permission, It is submitted that as per the letter of Ministry of Rural Development and Panchayat Raj Department DoK dated 24.02.2016, the Gram Panchayat do not have authority to issue trade licenses to industries. [**Annexure D to the Reply to the Statement of Objections**]

f) The Appellant also states that the said Appeal is within the limitation and is not barred by time as the cause of action arose on 15.032018 when the 2nd respondent had issued the impugned direction on the Appellant and on 31.03.2008 the WP 14808 of 2018 was preferred before the High court of Karnataka seeking to quash the direction of 15.03.2018 of the 2nd respondent and on 04.11.2019 when the high court granted permission to the appellant to approach the NGT within a period of 3 months and subsequently the NGT granted stay vide order dated 20.02.2020 and the same is subsisting till date. It is submitted that the appeal is filed within the prescribed period of limitation in accordance with the order of Karnataka high court. The Statement of Objections raised by the Respondents 5-8 is bereft of any merits and should not be taken into account.

It is therefore prayed that this Hon'ble Tribunal may be pleased to set aside the Impugned Direction dated 15.03.2018 in No. FEE 187/CRZ/2017 issued by the 2nd Respondent herein and remand the matter back to the authority for fresh consideration of the issue in accordance with the principles of natural justice.

Dated at Chennai on this the 3rd day of March 2022

Counsel for the Appellant