

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO. 109 OF 2023

IN THE MATTER OF:

PRALHAD TUKARAM GAWANDE AND ANR. APPLICANTS

VERSUS

STATE OF MAHARASHTRA AND ORS. RESPONDENTS

INDEX

S.N.	PARTICULARS	PAGE NO.
1.	Additional Affidavit filed on behalf of the Applicants	1023-1027
2.	<u>ANNEXURE A/1</u> Copy of the images taken by the Deponent on 15.09.2024 shows the illegal commencement of the construction of the Lower Penganga Irrigation Project at Yavatmal in Maharashtra.	1028-1029
	Proof of Service	1030

THROUGH



RITWICK DUTTA



RAHUL CHOUDHARY



KAUSTAV DHAR

ADVOCATES

COUNSELS FOR THE APPLICANTS

N-73, LGF, Greater Kailash – 1,
New Delhi – 110048

Email: dclaw160@gmail.com

PLACE: PUNE/DELHI

Dated:- 18.09.2024

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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ADDITIONAL AFFIDAVIT FILED ON BEHALF OF THE APPLICANTS

MOST RESPECTFULLY SHOWETH

I, Pralhad Tukarsm Gawande, Applicant No.1, aged about 71 years, S/o Late. Tukaram Narayan Gawande, R/o Umari (Kapeshwar), via Sawali Sadoba, TQ Arni, District - Yavatmal, Maharashtra – 445106, do hereby solemnly affirm and declare on oath as under:

1. That I am conversant with the facts and circumstances of the case and competent to swear this Additional Affidavit.
2. That the Deponent craves liberty to raise additional submissions or file additional affidavit in case need arises during the course of arguments.
3. That the Deponent submits that the following additional facts were not a part of the Original Application No. 109 of 2023, the same shall be placed on record for perusal of this Hon'ble Tribunal which are necessary for proper adjudication of the above-mentioned Application.
4. That the Deponent wants to file additional facts and documents, in particular, to bring on record the recent illegal commencement of the construction work of the Lower Penganga Irrigation Project at Yavatmal in Maharashtra by the project





proponent even after the expiry of the valid Environmental Clearance (hereafter referred as "EC") dated 17.05.2007 issued by the Ministry of Environment, Forest and Climate Change (hereafter referred as "MoEFCC") in absolute violation of the EIA Notification, 2006.

5. That the above titled Original Application was being filed under Sections 14 read with Section 20 of the National Green Tribunal Act, 2010 raising the grievance that the E-Tender No. 1 of 2023-2024 issued on 18.04.2023 for the purpose of commencing the construction of the Lower Penganga Irrigation Project at Yavatmal in Maharashtra after the expiry of Environmental Clearance in violation of Environmental Impact Assessment Notification, 2006.
6. The Deponent submits that it is absolutely pertinent to note that as per Para No. 8 of the EC dated 17.05.2007, which states that the EC granted to the 'project proponent is valid for five (5) years for the commencement of construction work', which accordingly got expired on 16.05.2012. That after the expiry of the valid EC on 16.05.2012, the Superintending Engineer of Lower Penganga Irrigation Project vide letter dated 18.06.2012 applied to the MoEFCC for extension/corrigendum of the EC. That in response to which a Corrigendum dated 27.09.2013 was issued by the MoEF&CC thereby making an amendment with regard to the extension of the EC and the validity of the EC was thereafter extended for a period of 10 years from the date of the issue of the EC, therefore, the new expiry date of the EC was 16.05.2017. That considering the corrigendum, it was allowed to be extended till the year 2017:

As per Para-3 of the EC of even number dated 17.5.2007, the validity was mentioned as 5 years for commencement of construction work. In this context, the following amendment in para-8 of the EC of even number dated 17.5.2007, is hereby made:

The environmental clearance is valid for a period of 10 years from the date of issue of this letter for "commissioning of the project"

Instead of



The environmental clearance is valid for a period of 5 years from the date of issue of this letter for "commencement of construction work"

7. It is crucial to note here that there is a specific modification in the phrases used in the corrigendum regarding the validity of EC i.e., the EC dated 17.05.2007 states that the same is valid for "5 years for commencement of construction work" whereas the corrigendum dated 27.09.2013 states that the EC is valid for "10 years for commissioning of the project". However, till date the project proponent has only initiated 1% of construction work let alone commissioning of the project. It is to be noted that the Corrigendum clearly states that EC is valid for 10 years for commissioning of the project and since the project proponent has failed to commission the project with the stipulated timeframe of 10 years i.e., 16.05.2017. Thus, the commencement of the construction work is absolutely illegal and is not permissible till fresh EC is obtained in accordance with the EIA Notification, 2006.
8. Further, this Hon'ble Tribunal vide order dated 04.10.2023 directed the Respondent No. 2, MoEFCC through its Regional Office at Nagpur to visit the project site and submit the fact finding report regarding construction of project, EC validity and compliance. It is pertinent to note that the Respondent No. 2, MoEFCC carried out a site inspection on 22.12.2023 and thereafter in its Affidavit dated 05.02.2024 has categorically recorded that the percentage of the completed work is about less than 1% and has stated that the project proponent shall be directed not to initiate any construction activity without a valid EC and further, submit a fresh proposal for obtaining EC, under the provisions of the EIA Notification 2006 as amended. The relevant extracts of the Reply Affidavit dated 05.11.2024 filed by the MoEFCC are reproduced hereby:

"13. Undersigned visited the project site and inspected the work carried out at site. Noted that the construction work of downstream bridge pillars



*have been started and left incomplete long back. According to PP the construction work of project carried out at site was during the year 2011 and 2012. **The percentage of the completed work may be about less than 1%. No fresh construction work is carried at site.***

14. Further, it is submitted that the EC was granted by the Ministry on 17.05.2007 to the project in question under the provisions of EIA Notification, 2006. The validity of EC dated 17.05.2007 stands expired on 16.05.2017 as the Ministry has communicated to Project Authorities vide its corrigendum letter dated 27.09.2013, that EC is valid for a period of 10 years from the date of issuance of EC letter dated 17.05.2007 for commissioning of the project.

15. In view of the aforesaid, the Project Proponent may be directed not to initiate any construction activity without a valid EC and further, submit a fresh proposal for obtaining EC, under the provisions of the EIA Notification 2006 as amended".

Thus, the Deponent submits that the MoEFCC has categorically accepted and recorded that the percentage of the completed work is about less than 1% and hence the project proponent shall be directed to obtain fresh EC under the EIA Notification 2006 before initiating any construction activity as the validity of EC dated 17.05.2007 stands expired on 16.05.2017.

9. The Deponent herein submits that despite such specific findings by the MoEFCC regarding not initiating any construction work without obtaining a valid EC, yet the project proponent made a deliberate and illegal attempt thereby initiating and commencing of the construction of the Lower Penganga Irrigation Project at Yavatmal in Maharashtra in absolute violation. The images captured by the Deponent on 15.09.2024 clearly highlights the gross violation of the EIA Notification 2006 as well as directions of the MoEFCC caused by the project proponent.



Copy of the images taken by the Deponent on 15.09.2024 shows the illegal commencement of the construction of the Lower Penganga Irrigation Project at Yavatmal in Maharashtra are annexed herewith as ANNEXURE A/1.

10. The above-mentioned facts and documents are filed in compliance to the order dated 28.08.2023 passed by this Hon'ble Tribunal in the above captioned matter and hence are necessary for proper adjudication of the matter. It is submitted that no prejudice will be caused to the Respondents if these documents are placed on record. It is therefore most respectfully submitted that the Original Application may be allowed in the interest of justice.

[Signature]
DEPONENT

VERIFICATION

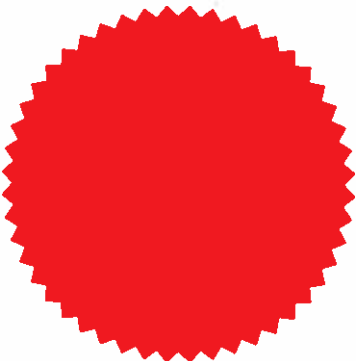
Verified on this 17 day of September, 2024 at Yavatmal that the contents of the above-mentioned Additional Affidavit are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

[Signature]
DEPONENT



Sr.No. 414/24 Date 17/9/2024
Sword before me Prakash
Tukaram Gawande R.V. Umari Kapesku
Identified by Advocate Self

[Signature]
Notary Public
Girdhari S. Balsani
Yavatmal
Pages 5 to ---



ANNEXURE A/1

COPY OF THE IMAGES TAKEN BY THE APPLICANT ON 15.09.2024 SHOWS THE ILLEGAL COMMENCEMENT OF THE CONSTRUCTION OF THE LOWER PENGANGA IRRIGATION PROJECT AT YAVATMAL IN MAHARASHTRA.







1030

DC Law Chambers <dclaw160@gmail.com>

**Copy of Additional Affidavit on behalf of the Applicant in OA No. 109 of 2023 (WZ)
Pralhad Tukaram Gawande & Ans. Vs The State of Maharashtra & Ors..**

1 message

DC Law Chambers <dclaw160@gmail.com>

Wed, Sep 18, 2024 at 11:00 AM

To: kaavya10jan@yahoo.com, cs@maharashtra.gov.in, secy-moef@nic.in, eelppd.yvtmalwrd@maharashtra.gov.in, seyic.yvtmalwrd@maharashtra.gov.in, Pushkal Mishra <pushkalm6@gmail.com>

Dear All,

Please find attached- Copy of Additional Affidavit on behalf of the Applicant in OA No. 109 of 2023 (WZ) Pralhad Tukaram Gawande & Ans. Vs The State of Maharashtra & Ors..

Thanks & Regards

Counsel for the Applicant

**ADDITIONAL AFFIDAVIT ON BEHALF OF APPLICANT.pdf**

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