

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (WZ) PUNE

ORIGINAL APPLICATION NO.69/ 2021

IN THE MATTER OF

MR. MAHENDRA GOVIND HASBNIS - APPLICANT

VERSUS

1. CIKAUTXO INDIA PVT LTD - RESPONDENTS
AND 9 OTHERS

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Pune

Dated: 16th August, 2021

Hasabnis
APPLICANT
(Mahendra Govind Hasabnis)

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (WZ) PUNE

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1. CIKAUTOXO INDIA PVT LTD - RESPONDENTS
AND 9 OTHERS

AFFIDAVIT-IN-REPLY FILED ON BEHALF OF THE APPLICANT IN
RESPONSE TO FACTUAL AND ACTION REPORT DATED
25/11/2021, SUBMITTED BY THE RESPONDENT NO. 9, IN THE
ORIGINAL APPLICATION 69/2021 (WZ), IN COMPLIANCE OF THE
ORDER DATED 01/10/2021, PASSED BY THIS HON'BLE
TRIBUNAL

Most Respectfully Showeth:

1. The Applicant has filed an application before this Hon'ble Tribunal to restore his fundamental right to life and clean as well as secured environment under Article 21 of the Constitution of India and to restore the property of the Applicant which was/is damaged due to intentional pollution of the Respondent Nos. 1 to 6.

2. That this Hon'ble Tribunal vide its order dated 01/10/2021 was pleased to direct the Respondent No.9 Member Secretary, Maharashtra Pollution Control Board to cause inspection of the Respondent No.1-Unit/Factory and filed a factual and action report as to the complaints of the pollution control norms. That this Hon'ble Tribunal vide its order dated further directed to assess that whether the operation of the said unit, is resulted in any environmental impact?.

3. That in compliance with the order dated 01/10/2021, the Respondent No.9, MPCB had visited the unit/Factory of the



Respondent No.1 on 24/11/2021 and filed its factual and action report dated 25/11/2021 on the record of this Tribunal.

4. That the Applicant seeks to raise the following issues with regards to the contents of the said Report dated 25/11/2021 filed by the Respondent No.9 -

(a) That first and foremost, the Report dated 25/11/2021, filed by the Respondent No.9 is inadequate.

(b) That the contents of the Report dated 25/11/2021 are not admitted to the Applicant unless and until specifically admitted by the Applicant in the present reply.

(c) That as per the report dated 25/11/2021, the Respondent No.9, MPCB, has stated the following documents as well as incidental dates-

Sr. No	Description of document to furnish Action Taken Report	Date	Annexure No	Page No.
1	Consent to operate granted to Respondent No 1 valid up to 31/07/2021	28/09/2015	I	74 to 79
2	Complaint from Applicant	29/03/2019		
3	Surprise visit by MPCB	01/04/2019		
4	Show-cause notice issued by MPCB to Respondent No 1	09/05/2019	II	80
5	Stack monitoring carried out and results thereof	10/11/2019	III	81
6	Directions issued by MPCB	26/11/2019	IV	82 & 83
7	Personal hearing to Respondent No 1	29/11/2019		
8	Directions issued to the Respondent No 1 asking for additional BG of Rs25,000/- and forfeiting Rs12,500/- from earlier BG for non-compliance	19/12/2019	V & VI	84 & 85
	Additional opportunity of personal hearing to Respondent No 1	23/02/2021		



10	Again interim directions to Respondent No 1 asking for additional BG of Rs50,000/- and forfeiting BG of Rs25,000/- for non-compliance	09/04/2019	VII & VIII	86 & 87
11	Renovation of Consent to Operate of the Respondent No 1 after verifying the compliance	20/09/2021	IX	88 to 93

(d) That, the report dated 25/11/2021, is completely silent about any action taken or fact finding done to understand the impact of consistent air and water pollution on the health of cattle, trees, land of the Applicant, before the alleged change in fuel by the Respondent No-1 or thereafter in furtherance of the order of this Hon'ble Tribunal.

(e) That, none of the documents filed by the Respondent No.9 along with the Report dated 25/11/2021, provided any information about the environmental impact that has been caused due to the operation of the Respondent No.1 unit in the nearby area, such as downstream water body, reserved forest in the backyard, land in the adjacent areas, or on any of the environmental components.

(f) That the report of the Ambient Air Quality sample analysis is not enclosed in the report or in annexures.

(g) That, no statement has been done about the samples taken to understand soil pollution done by the Respondent No.1 company before alleged alteration of fuel from Furnace Oil to LPG and to understand pollution done in the nearby area or water body due to non-operation of inadequate ETP before and 'now operational' ETP of 5 CMD.

(h) That, the non-compliance of the Respondent No.1 is consistent since 2016 and so far following 4 complaints have been



filed by the Applicant with MPCB after renovation of the Consent to Operate By MPCB in 2015 -

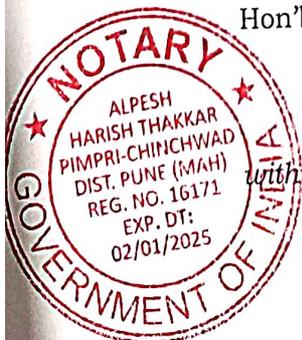
Sr. No	Complaint dated	Annexure No	Page No.
1	25/05/2016	A3	27 & 27A
2	23/03/2017	A5	30 & 30A
3	4/01/2019	A7	37 & 37A
4	29/03/2019	As stated by MPCB	

That to the utter shock and surprise inspite of receiving so many complaints from the Applicant, the MPCB, Pune just responded by issuing show-cause notices and directions to the Respondent No.1 Company and that too without taking any stringent action for the protection of the Applicant's cattle, trees, soil and nearby environment.

(i) That, instead of taking cognizance of the complaint of the Applicant which was filed in the year 2016 and to ensure compliance from Respondent No 1 and further in-spite of non-compliance to the directions issued from time to time by MPCB, the MPCB had revised the Addendum to Consent to Operate overriding earlier Consent to Operate on 19/07/2017, Which is at Annexure-A6, page No.31 to 36.

(j) That, no explanations has been given by MPCB in its report as to, whether the Respondent No-1 unit was operational without having valid Consent to Operate between 31/07/2021 and 20/09/2021 or was the unit closed as the earlier Consent to Operate was valid up till 31/07/2021 and the renewal of Consent to Operate is done on 20/09/2021.

(k) That, in spite of having specific Gazetted Enforcement Policy since 2016 that was established on the directions of this Hon'ble Tribunal , which clearly states:



(d) **Conditional Directions:** In order to secure compliance within stipulated time period, after issuance of the PD, on the basis of

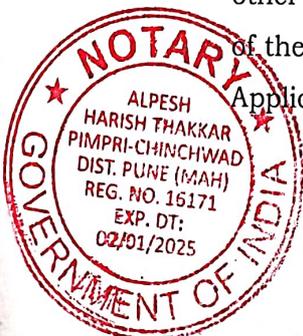
reply/no reply, subsequent to grant of opportunity of hearing, final conditional directions with time-frame to comply with the conditions imposed to be issued, within 45 days. If those conditions are not complied with, then prohibitory/restraining Orders to 'be issued to stop polluted discharge/emissions u/s 32 of Water & u/s 22 of Air Acts. If compliance is not done after issuance of prohibitory Order, then the application u/s 33 of Water/ u/s 22A of Air Act can be filed before JMFC / CJM for appropriate Orders.'

That it is evident that no action was initiated by the MPCB in accordance with the policy to immediately control the pollution, while the Applicant's cattle were aborting and dying.

(l) That, even after consistent violation of environmental norms and conditions given in consent to operate by the Respondent No-9, the MPCB, Pune did not mention anything in the report dated 25/11/2021, about the essential action taken by it as has been mentioned in the Enforcement policy on Page no 11 with a heading (D) **Conditions for Remediation / Restoration to be incorporated/ imposed for damage caused to the environment in Consents / Directions of Defaulting Industries.**

(m) That, in spite of serving object notice dated 14/08/2021 for renewal of the Consent to Operate to Respondent No.9, without giving an opportunity of being heard to the Applicant for assessing damages caused due to pollution to his property, and without ensuring environmental remediation and restoration, the Respondent No.9 renewed Consent to Operate of the Respondent-1 Company.

5. As the action taken by the Respondent No.10 is late, inadequate and incorrect, it allowed the Respondent Nos.1 to 6 to destroy the Applicant's mango orchard. That the pollution caused by the activities of the Respondent Nos. 1 to 6 is mainly responsible for the demise of young calves and pregnant cows of the Applicant. That so also due to constant pollution, the health of the cows, buffalo and other calves started deteriorating and which consequently lead to loss of the Applicant's direct income and damage to his property. That the Applicant has filed present application with an intention to protect the



his fundamental right to clean environment as well as for loss of his cattle, trees and property and to seek relief for installation of essential systems to stop further water and air pollution in the area by the Respondent Nos. 1 to 6.

6. That the Respondent No.1 company is manufacturing rubber hoses with or without fitting under description manufacturing of other rubber products. The operation of the Respondent No.1 Company suddenly increased after 2011 and as a result of which the pollution of hot carbon soot and untreated trade water started increasing in the premises.

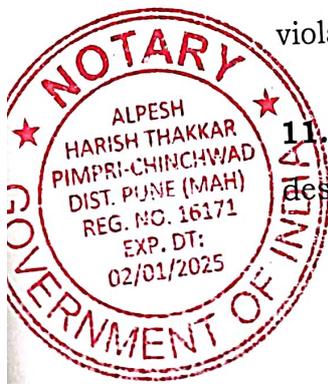
7. That the Respondent Nos. 1 to 6 have knowing fully well ignored the provisions of law and the Respondent authorities have tuned blind eye towards this wealthy multi-national company by doing delinquencies in their official duties and by allowing the sever loss to the Applicant, allowing the death of cattle of the Applicant, degradation of flora and fauna on the Applicant's land, destruction of his mango orchard and countless destruction by allowing ground water pollution.

8. The failure of the Respondent authorities to perform their duties has resulted in the present situation and in violation of all environmental laws and the Constitution of India.

9. The Respondent authorities ought to have given 'consent to operate' only after ensuring installation of essential pollution control systems by the Respondent No.1 Company but it seems that the Respondent No.10 and other officials never checked whether the Respondent No.1 Company has adequate pollution control measures installed before giving the Consent in the year, 2015.

10. The Respondent authorities ought to have followed the principles of law in its letter & spirit to stop the Respondent No. Company from further polluting ground water and air, after the first violation of consent terms.

11. The Respondent authorities ought to have prevented destruction of mango orchard, other fruiting trees, degradation



health of animals, property contamination, and death of cattle of the Applicant by taking necessary and immediate action for controlling the pollution activities of the Respondent No.1 Company.

12. The Respondent authorities ought to have used all the powers under the law to prevent the Respondent No.1 Company from doing illegal activities by consistently violating consent terms.

13. The failure of the Respondent authorities to timely perform their duties in accordance with the law and prudence is leading to violation of Article 21 and Article 51 A (g) of the Constitution of India, violation of consent terms issued under section 26 of Water (prevention & Control of Pollution) Act, 1972 & section 21 of the Air (prevention & Control of Pollution) Act, 1981 and Authorization/ Renewal of Authorization under Rule 5 of the Hazardous Waste (Management, Handling & Trans-boundary Movement) Rules, 2008.

14. The failure of the Respondent authorities to take appropriate action against polluter has led to further pollution of ground-water, reserved forests and air in the vicinity of the Respondent No.1 Company and property of the Applicant.

15. That the acts and actions on the part of the Respondent authorities are bad in law and against the principles of natural justice, by denying the opportunity of being heard to the Applicant herein.

16. That the show-cause notices issued by the Respondent No.10 were not in conformity with the documentary evidence adduced by the Applicant.

It is therefore submitted before this Hon'ble Tribunal that a fresh inspection to be carried out by appointing of independent committee, technical institution such as NEERI / IIT Powai / ICT, Matunga / National Institute of Oceanography/ Central Ground Water Board (CGWB)/ State Ground Water Board (SGWB) for the assessment of environmental pollution caused by the Respondent No-1 unit and the damages to the Applicant's property, cattle, trees, loss of livelihood



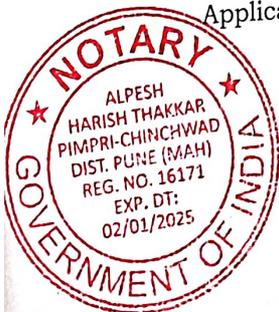
based on directions given by Hon'ble NGT in various matters, as specific response on the issued mentioned by the Applicant, viz, non-compliance of Specific Conditions be sought from the would be appointed Committee, as the Report dated 25/11/2021, submitted by the Respondent No.9 does not sufficiently address all the issues, and the silence of the Respondent No.9 has the effect of misleading this Honble Tribunal

17. That so also this Hon'ble Tribunal need to suspend the Consent to Operate issued by the MPCB to the Respondent No - 1 to ensure reply from the Respondents and the liability of the directors of the Respondent No.1 company and MPCB officials for wilfully allowing environmental harm and damage to the Applicant's property needs to be framed.

PRYEYER:

For the reasons stated above, it is humbly prayed that this Honourable Tribunal may be pleased to:

- (a) suspend the Consent to Operate issued by the MPCB to the Respondent No - 1 to ensure response from the Respondents;
- (b) frame the liability of the directors and responsible MPCB officials for wilfully allowing environmental harm and damage to my property;
- (c) consider appointment of independent committee, technical institution such as NEERI / IIT Powai / ICT, Matunga / National Institute of Oceanography/ Central Ground Water Board (CGWB)/ State Ground Water Board (SGWB) for the assessment of environmental pollution caused by the Respondent No-1 unit and the damages to my property, cattle, trees, loss of livelihood based on directions given by Hon'ble NGT in various matters;
- (d) Direct the Respondents to pay cost of present Reply to the Applicant;



(e) Any other relief as this Hon'ble tribunal may deem fit in the facts and circumstances of the matter for the protection of environment, ecology and my fundamental right to live in clean & healthy environment;

Hasab...
APPLICANT

VERIFICATION

I, Mahendra Govind Hasbnis, age about 59 years, Occup. Agriculturist and Business, residing at Survey No.408/7, Limbfata, Mumbai-Pune Road, Talegaon Dabhade, Taluka Maval, District Pune 410506, the Applicant herein, do hereby verify that the contents of the above paragraphs are true to the best of my knowledge and that I have not suppressed any material fact. In witness whereof I have signed present application on 16th January, 2022 at Pune.

Date: 16th January, 2022

Place: Pune

Hasab...
APPLICANT



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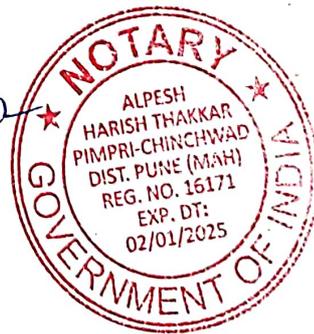
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AND 9 OTHERS

AFFIDAVIT IN SUPPORT OF REPLY TO REPORT

I Mr. Mahendra Govind Hasabnis, Age- 59 Yrs, Occupation- :
Agriculturist and Business, R/at Survey No.408/7, Old Pune
Mumbai Road, Talegaon Dabhade, Taluka Maval, District Pune, Pin-
410506, the Applicant herein do hereby solemnly affirmed that the
contents of reply are true to my personal knowledge and information.
I have not suppressed any material fact. In witness hereof signed
here at Pune 16th day of January, 2022.

Hasabnis
AFFIANT

BEFORE ME
Alpesh
16/1/2022
ALPESH HARISH THAKKAR
ADVOCATE & NOTARY
GOVT. OF INDIA
PIMPRI, DIST. PUNE



The identity of executant verified by
Mahendra G. Hasabnis
Ad' Election Card

NOTED & REGISTERED
AT SR. NO.: 1/2022.

I know the execu
[Signature]
Advocate.

