

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH IN NEW DELHI

EA NO. 39 OF 2023

IN

OA NO. 400 OF 2019

IN THE MATTER OF:

Social Action for Forest & Environment (SAFE)

...Applicant

Versus

Union of India & Ors.

...Respondents

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NDoH: 22.03.2024

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2. Proof of Service

752

Date: 21.03.2024

Place: New Delhi

DRAWN & FILED BY:



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Senior Advocate

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
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IN THE MATTER OF:

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Common Objections by the Applicant to the Reply Affidavit dated 18.01.2024 of Respondent No. 2 – Central Pollution Control Board and Compliance Report dated 07.03.2024 of Respondent No. 1 – Ministry of Environment, Forest and Climate Change

MOST RESPECTFULLY SHEWETH:

1. That this Execution Application has been filed for effective execution of the Final Order dated 07.11.2022 passed by this Hon'ble Tribunal in O.A. No. 400/2019 wherein the Applicant herein had raised the issue of mismanagement of End of Life Tyres/Waste Tyres generated in India as well as the issue of import of such tyres within the country. Further, a ban was sought on the indiscriminate use of waste tyres by the Pyrolysis Industry that operate in violation of environmental norms as under the Environment Protection Act, 1986, and Rules made thereunder, the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, Hazardous Chemical Rules, 1989, CPCB Guidelines for End of Life Vehicles 2016 and MoEF&CC's Standard Operating Procedure among others.
2. That while recognizing that none of its directions issued through its Final Order dated 07.11.2022 had been complied with till date, including finalization of the

revised Standard of Procedure (SOP) and certainty in classification of Tyre Pyrolysis Plants, this Hon'ble Tribunal issued Notice to the Respondent No. 1 – Ministry of Environment, Forests and Climate Change (“MoEF&CC”) and the Respondent No. 2 – Central Pollution Control Board (“CPCB”). Pertinently, this Hon'ble Tribunal had given a categorical direction on 07.11.2023 that the suggestions recorded in Para 4 of the Final Order dated 07.11.2022 may be considered by the above said Respondent authorities at the time of finalizing the SOP.

3. That, subsequently, the Respondent No. 2, CPCB, filed its Reply Affidavit dated 18.01.2024 highlighting the actions taken by it in view of the directions passed in Final Order dated 07.11.2022. Accordingly, this Reply Affidavit dated 18.01.2024 was considered by this Hon'ble Tribunal on 19.01.2024. While doing so, this Hon'ble Tribunal observed certain shortcomings in the SOP such as a lack of any emphasis on State Pollution Control Boards/Pollution Control Committees incorporating the requirement of Zero Liquid Discharge (ZLD) and emission standards while granting Consents to Operate under the Water Act, 1974, and Air Act, 1981. Further, the lack of any clarification regarding utilization of Tyre Pyrolysis Oil as fuel by industries and its appraisal as an ‘Approved Fuel’ under the Air Act, 1981. Thereafter, this Hon'ble Tribunal proceeded to grant three weeks’ time to the Respondent No. 1 – MoEF&CC for filing its compliance report and a further opportunity was granted to the Respondent No. 2, CPCB, for responding to the adverse observations made by this Hon'ble Tribunal in its Order dated 19.01.2024, as discussed above. Additionally, the Applicant was given an opportunity to respond to the reports of the Respondent No. 1, MoEF&CC and Respondent No. 2, CPCB.
4. That the Respondent No. 1, MoEF&CC, filed its Compliance Report on 07.03.2024 in view of the Order dated 19.01.2024 of this Hon'ble Tribunal.

5. That, accordingly, in compliance of the Order dated 19.01.2024 of this Hon'ble Tribunal, the Applicant herein is filing its Common Objections to the Reply Affidavit dated 18.01.2024 of Respondent No. 2, CPCB and Compliance Report dated 07.03.2024 of Respondent No. 1, MoEF&CC.
6. That at the outset it is submitted that the Reply Affidavit dated 18.01.2024 and Compliance Report dated 07.03.2024 of the CPCB and MoEF&CC, respectively, fail to provide any information on several issues flagged by the Original Applicant herein and which were required to be addressed by both the Respondent authorities as per the express directions of this Hon'ble Tribunal. That these issues include, *inter alia*, providing details of the compensation imposed or action taken against pyrolysis units which have been found to be operating in violation of environmental norms, action taken to ensure compliance of zero emission norms for Tyre Pyrolysis units, action taken to ensure that carbon black is not disposed of in landfills, among others.
7. That, further, the Respondent No. 2, CPCB, has submitted that its Committee on 'Classification of Industrial Sectors into Red, Orange, Green & White Categories' has classified Tyre Pyrolysis Units (TPOs) into Orange category. In this regard, the Applicant humbly submits that despite such an averment, no basis or rationale for such categorization has been reflected in Respondent No. 2, CPCB's Counter Affidavit dated 18.01.2024 that would justify categorizing TPOs under 'Orange Category', despite the observations of this Hon'ble Tribunal regarding the highly polluting nature of such an industry and the detailed submissions made by the Applicant herein to support the stand that such an industry should be categorized as 'Red Category'. It is also pertinent to mention herein that the information provided by the Respondent No. 2, CPCB, in its own Report dated 05.11.2022 (ANNEXURE A/17 to the E.A No. 39/2023) submits that twelve out of seventeen States where Pyrolysis Industries exist have

categorized TPOs as 'Red Category'. In fact, two States have categorized TPOs under both Red and Orange categories, just two have categorized it under Orange Category and one has categorized TPOs under Red and Green Category (Pg. 433 of E.A No. 39/2023). Illustratively, even during the proceedings in the O.A. No. 400/2019, the Applicant herein had highlighted that the State of Punjab had categorized TPOs as 'Red Category' through its Office Order dated 29.09.2016. Therefore, to settle such dissonance, the Respondent No. 2, CPCB, ought to have considered that a majority of the States consider TPOs to be in the category of the most polluting industries i.e. 'Red Category'. However, not only did the CPCB ignore such classification by the States but it has also provided no clear means of assessment for classifying TPOs as 'Orange Category'.

8. That further, contrary to the submissions made by the Respondent No. 2, CPCB, in its Reply Affidavit that the recommendations of the Applicant made in its Representation dated 10.08.2019 to the CPCB (brought on record through I.A. No. 615/2019 dated 18.09.2019) have been considered, it is submitted that none of the recommendations have been incorporated in the Draft SOP. In fact, there exists nothing on record to reflect that the above said recommendations of the Applicant herein were considered or deliberated. Evidently, despite the express directions of this Hon'ble Tribunal, the Respondent No. 2, CPCB omitted to seriously go through the suggestions made by the Applicant. In this regard, it is apposite to refer to the Order of this Hon'ble Tribunal dated 25.10.2021 whereby these very recommendations of the Applicant were reiterated by this Hon'ble Tribunal. Additionally, even the Final Order dated 07.11.2022 of this Hon'ble Tribunal in O.A. No. 400/2019 noted the recommendations submitted by the Applicant in its Representation dated 10.08.2019 to the CPCB, while making a particular direction that the revised SOP shall be finalized by the CPCB and MoEF&CC in light of discussions during the hearing as well as the observations

made by this Hon'ble Tribunal in its Orders. Lastly, it is reiterated that this Hon'ble Tribunal, in its Order dated 07.11.2023, had specifically directed the CPCB that the suggestions recorded in Para 4 of the Final Order dated 07.11.2022 (which is related to consideration of the recommendations made by the Applicant) may be considered by the CPCB at the time of finalizing the SOP. Therefore, the Applicant herein submits that the CPCB and MoEF&CC ought to have considered the recommendations made by the Applicant in its Representation dated 10.08.2019.

9. That the Counter Affidavit dated 18.01.2024 of the Respondent No. 2, CPCB, fails to provide any details of further developments in respect of the directions issued by this Hon'ble Tribunal in its Order dated 19.09.2019 regarding the apprehension of India becoming a dump yard for highly polluting hazardous waste material in view of the import of waste tyres. The only averment made in this respect is a direction dated 14.12.2019 whereby SPCBs/PCCs were directed to strictly regulate the import of polluting hazardous waste materials as per the Hazardous and Other Waste (Management & Transboundary Movement) Rules, 2016. However, the action taken by the SPCBs/PCCs to regulate imported waste tyres is unknown since nothing has been furnished by the Respondent authorities in this regard.
10. That the Respondent authorities have not reported on any development in respect of the directions issued on 20.12.2019 by the CPCB in view of the Order of this Hon'ble Tribunal stating that Consents to Establish can only be issued to TPOs after assessing the carrying capacity of the area and ensuring safeguards to the health of the workers. There is not a whisper by either of the Respondent regulatory authorities on this front.
11. That further, the discrepancies highlighted and suggestions made in the Common Objections dated 22.05.2020 filed by the Applicant herein to the Reports of the

CPCB dated 31.07.2019, 18.12.2019 and 03.01.2020 have not been considered by the Respondent No. 2, CPCB. These include requiring the CPCB to submit information such as below:

- i. Details of each Pyrolysis Unit along with the details of the Consents issued to them;
- ii. Status of compliance of norms under the Hazardous Waste Rules of 2016;
- iii. Details of compliance towards submission of Annual Environment Statement as per the Environment Protection Rules, 1986;
- iv. Details to indicate compliance with Hazardous Chemical Rules, 1989;
- v. Status of compliance with Clauses 2.1.1 and 2.1.13 of the SOP of MoEF&CC, identifying all Pyrolysis Units operating illegally, setting standard for Pyrolysis oil, procuring details of each Pyrolysis Unit such as their Capital and revenue expenditures, capacity of plant, total area of their location, total sale in the last three years, GST among others.

It is submitted that the above suggestions strike at the root of the problem with regard to illegally operating Tyre Pyrolysis Plants which operate in large numbers even to this day. If the above said suggestions are implemented, it would be a far more effective and efficacious remedy to save the environment, particularly the air quality of the region which is causing huge damage to the life and particularly lungs of the citizens of this country.

12. That the Respondent No. 2, CPCB, has failed to reflect any correspondence with the Ministry of Petroleum in view of applicability of the Hazardous Chemical Rules, 1989, on Pyrolysis Industry.

13. That it is also submitted that the Compliance Report dated 07.03.2024 of the MoEF&CC is also silent on all the above discussed aspects. Further the MoEF&CC has not made any submissions on how the recommendations submitted by the Applicant in its Representation dated 10.08.2019 to the CPCB

(brought on record under I.A. no. 615/2019 dated 18.09.2019) have been considered, especially while finalizing the EPR framework for ELTs/waste tyres notified on 21.07.2022. Pertinently, for the sake of convenience, it is submitted that the suggestions which directly concern EPR are listed out at Para 30 of the E.A. No. 39/2023 dated 28.10.2023.

**PARA-WISE REPLY TO THE REPLY AFFIDAVIT DATED 18.01.2024
OF THE RESPONDENT NO. 2, CPCB:**

14. That the contents of Para A to Para E are a matter of record and require no response.
15. That in response to Para 1(A), it is reiterated that there is no basis provided for categorizing Pyrolysis Plants under Orange Category especially considering that a majority of SPCBs/PCCs have classified TPOs as 'Red Category'.
16. That the contents of the Para 1(B) are a matter of record and require no response.
17. That in response to Para 1(C), it is submitted that while finalizing the SOP, the recommendations made by the Applicant in its Representation dated 10.08.2019 to the CPCB (brought on record under I.A. no. 615/2019 dated 18.09.2019) have not been considered even though specific directions have been passed by this Hon'ble Tribunal. The CPCB has failed to show any measure taken by it which would indicate at due consideration having been shown to the said recommendations of the Applicant.
18. That in response to Para 1(D), it is submitted that even though the status of compliance of Pyrolysis Units have been submitted by the CPCB in its various reports, however, till date, no clear picture has been provided as to the environmental compensation imposed on the units that had been or have been found to be non-compliant to the applicable environmental norms. It is important that all such units are imposed with environmental compensation and a report in this regard be submitted to this Hon'ble Tribunal.

19. That in response to Para 1(E), it is submitted that no measure has been reported showing coordination with the Ministry of Petroleum for ensuring that Hazardous Chemical Rules, 1989, which are applicable to Tyre Pyrolysis Units, have been complied with.
20. That in response to Para 1(F) to 1(L), it is submitted that there are several recommendations provided by the Applicant in its Representation dated 10.08.2019 to the CPCB (brought on record under I.A. no. 615/2019 dated 18.09.2019) which could have been considered and included in the EPR framework notified by the Respondent No. 1, MoEF&CC. However, the same has not been done despite repeated directions and multiple Orders of this Hon'ble Tribunal.
21. That the contents of Para 2 is denied as false and devoid of any merit. It is reiterated that the CPCB has not complied with all the directions of this Hon'ble Tribunal as is evident from the submissions made by the Applicant hereinabove.
22. That the contents of Para 3 need no reply.
23. That the contents of the Para 4 is a matter of record and needs no reply.
24. That the contents of Para 5 need no reply.
25. That in response to Para 6, it is denied that the recommendations provided by the Applicant in its Representation dated 10.08.2019 to the CPCB (brought on record under I.A. no. 615/2019 dated 18.09.2019) have been duly considered by the CPCB, as already discussed in the preceding paragraphs.
26. That in response to contents of Para 7, it is submitted that even though import of waste tyres for Pyrolysis Units has been prohibited, however, imported tyres are still finding their way to Tyre Pyrolysis Plants in a clandestine fashion. The Respondent No. 2, CPCB, has failed to show any measure taken for ensuring ground level implementation and impact. In this regard, the Applicant had filed

Reports of its field visits, as filed in O.A. 400/2019, which displayed Tyre Pyrolysis Units where imported waste tyres were found.

27. That the contents of para 8 needs no response.
28. That in response to Para 9, it is submitted that even though specific directions were issued by the Respondent No. 2, CPCB, in its directions dated 04.12.2019 and 30.12.2019 regarding import of hazardous waste materials, siting of the units being as per carrying capacity, ensuring health of workers among others, nothing has been submitted to reflect any measure undertaken by the Respondent authorities for implementation of the above said directions.
29. That the contents of para 10 are a matter of record and it is submitted that the sample size is inadequate and the said study needs to be revisited with proper sample size reflecting ground realities on the issue of Tyre Pyrolysis Plants.
30. That in response to Para 11, it is denied that the recommendations provided by the Applicant through its Representation dated 10.08.2019 to the CPCB (brought on record under I.A. no. 615/2019 dated 18.09.2019) have been duly considered by the CPCB as already pointed out above. Further, Para 12 of the Execution Application is reiterated to submit that the discrepancies noted in the said Common Objections have also not been considered by the CPCB.
31. That the contents of Para 12 are denied as false and devoid of any merit. It is submitted that the contents of Para 13 of the Execution Application are being reiterated herein and it is emphasized that no consultation has been done by the CPCB with the Ministry of Petroleum towards implementation of the Hazardous Chemical Rules, 1989, which are applicable to Tyre Pyrolysis Plants.
32. That in response to Para 13, the contents of corresponding Para 14 of the Execution Application are reiterated herein and are not being repeated for the sake of brevity.

33. That the contents of Para 14 are denied as false and devoid of any merits. In this regard, it is submitted that the recommendations in Representation dated 10.08.2019 to the CPCB (brought on record under I.A. no. 615/2019 dated 18.09.2019) have not been considered by the CPCB till date.
34. That in response to Para 15, it is reiterated that not all the issues raised by the Applicant have been addressed by the CPCB or by the EPR framework issued under notification dated 21.07.2022 and therefore the said para is denied as false.
35. That the contents of Para 16 and 17 are a matter of record and need no reply.
36. That the contents of Para 18 are denied as false and it is reiterated that there are several directions issued by this Hon'ble Tribunal in its Order dated 07.11.2022 which have not been complied with and which have already been discussed herein above.
37. That in response to Para 19, it is denied that the recommendations provided by the Applicant in its Representation dated 10.08.2019 to the CPCB (brought on record under I.A. no. 615/2019 dated 18.09.2019) have been duly considered by the CPCB as already pointed out above. That further the corresponding Para 20 of the Execution Application is reiterated with the submission that the discrepancies noted in the Common Objections have not been considered by the CPCB.
38. That in response to Para 20, it is reiterated that the CPCB has not complied with all the directions passed by Order dated 07.11.2022, as pointed out above. Further, it is submitted that there is no basis provided for categorizing Tyre Pyrolysis Plants under Orange Category especially considering the fact that a majority of the SPCBs/PCCs have classified TPOs under 'Red Category'.
39. That the contents of Para 21 are denied as false. It is submitted that the CPCB has failed in ensuring that the SPCBs/PCCs impose environmental compensation on the units which have been found to be non-compliant over the course of the

adjudication of the present case. No details have been provided by the CPCB on the environmental compensation imposed on each Pyrolysis Plant which has been found to be non-compliant. Further the contents of corresponding para 22 of the Execution Application have reiterated herein and are not being repeated for the sake of brevity.

40. That in response to Para 22, it is submitted that there is no basis provided for categorizing Pyrolysis Plants under Orange Category especially considering the fact that a majority of the SPCBs/PCCs have considered the same under 'Red Category'.

41. That in response to Para 23, it is submitted that even though the SOP provides for ensuring Zero Effluent discharge, however a condition for ensuring Zero Emission has not been provided. That the CPCB has not explained as to why the said condition cannot be imposed by the CPCB.

42. That in response to Para 24 it is submitted that CPCB has not provided any measure which shows compliance of the direction of this Hon'ble Tribunal for ensuring that no Black Carbon ends up in landfills.

43. That the contents of para 25 are a matter of record and need no reply.

44. That in response to Para 26, it is denied that the recommendations provided by the Applicant in its Representation dated 10.08.2019 to the CPCB have been duly considered by the CPCB. Further, the corresponding Para 27-28 of the Execution Application are reiterated herein and are not being repeated for the sake of brevity.

45. That in response to contents of Para 27, it is submitted that even though import of waste tyres for Pyrolysis Units has been prohibited, however, imported tyres are still finding their way into Tyre Pyrolysis Plants. The CPCB has failed to reflect any measure taken by it to ensure its implementation on the ground level.

That further the contents of corresponding Para 29 of the Execution Application are reiterated herein and have not been repeated for the sake of brevity.

46. That the content of Para 28 are denied and the contents of corresponding Para 30 of the Execution Application are reiterated herein and have not been repeated for the sake of brevity.

47. That in response to Para 29, it is submitted that there is no basis provided for categorizing Pyrolysis Plants under Orange Category especially considering that fact the majority of SPCBs has considered the same under Red Category.

48. That in response to the Grounds, the points mentioned above in the present objections are reiterated and are not being repeated for the sake of brevity.

**PARA-WISE REPLY TO THE COMPLIANCE REPORT OF MOEF&CC
DATED 07.03.2024:**

49. That in response to Para 1 to 10 of the Compliance Report of MoEF&CC, it is submitted that the said report is also silent on the issues raised in the present Common Objections. Further the MoEF&CC has also not provided any submissions as to how the recommendations submitted by the Applicant in its Representation dated 10.08.2019 to the CPCB (brought on record under I.A. no. 615/2019 dated 18.09.2019) have been considered by it, especially while finalizing the EPR framework for ELTs/waste tyres notified through its notification dated 21.07.2022. The suggestions, which are directly concerning EPR, have been listed out at Para 30 of the E.A. No. 39/2023 dated 28.10.2023.

Date: 21.03.2024

Place: New Delhi

DRAWN & FILED BY:



Saumitra Jaiswal

SETTLED BY:

Mr. Sanjay Upadhyay

Senior Advocate

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

E.A. NO. 39 OF 2023

IN

ORIGINAL APPLICATION NO. 400/2019

IN THE MATTER OF:

Social Action for Forest and Environment (SAFE)Applicant

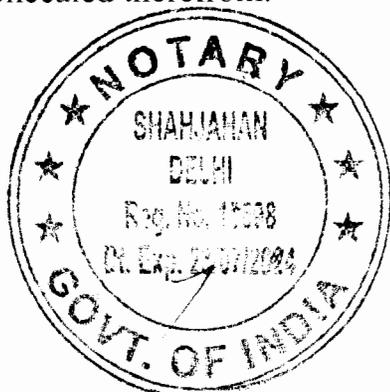
Versus

Union of India & Ors.Respondent

AFFIDAVIT

I, Vikrant Tongad, S/o Shri Balijeet Singh, aged about 33 years, President of the Applicant Organization, Office at A-93, Sector – 36, Greater Noida – 201310 presently at New Delhi do hereby solemnly affirm and declare as under:

1. That I am full conversant of the facts and circumstances of the matter and am competent to swear this Affidavit.
2. The contents of the accompanying Objections have been drafted by the counsel under my instructions and the contents of the same are true and correct to my knowledge and no part of it is false and no material has been concealed therefrom.



DEPONENT

Verification:

20 MAR 2024

Verified at New Delhi on this ____ day of ____ 2024 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing material has been concealed there from.

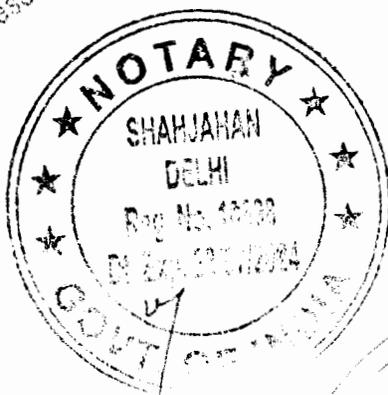
[Signature]

DEPONENT

Aamir
D/10/82/2017

20 MAR 2024

Identified the deponent who has signed/put in my presence.



CERTIFIED THAT THE DEPONENT
Shriant/Kr...
S/o W/o Dr...
Identified by Shri...
has solemnly affirmed before me at Delhi
on...
that the contents of the affidavit
have been read & explained to me are
true and correct to this & knowledge

[Signature]

Notary Public

Seemant-9
Jyoti-9
ACU

75



Service in SAFE Vs. Union of India & Ors. [EA. No. 39 of 2023 in OA. No. 400 of 2019]

ELDF <eldflegal@gmail.com>

Thu, Mar 21, 2024 at 12:43 PM

To: Raj Kumar <advrajkumar@gmail.com>, "swatijindalgarg@gmail.com" <swatijindalgarg@gmail.com>

Cc: Saumitra Jaiswal <SAUMITRA@eldfindia.com>, Gitanjali Sanyal <gitanjali@eldfindia.com>

Dear Sir/Ma'am

Apologies for the above mail. Please ignore the previous mail.

Please find the attached copy of the Common Objections by the Applicant to the Reply Affidavit dated 18.01.2024 of Respondent No. 2 – Central Pollution Control Board and Compliance Report dated 07.03.2024 of Respondent No. 1 – Ministry of Environment, Forest and Climate Change.

Thanks & Regards

--

Sameer Manher

Clerk

Enviro Legal Defence Firm

29, Presidential Estate LGF,

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Ph. No. 011-40573181

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 **Objections.pdf**

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