

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL AT
WESTERN BENCH, PUNE

MISC. APPLICATION NO. 05 OF 2024 (WZ)

IN

EXECUTION APPLICATION NO. 12 OF 2022 (WZ)

IN

ORIGINAL APPLICATION NO. 80 OF 2020 (WZ)

IN THE MATTER OF :-

VANSHAKTI & ANR.

...APPLICANT(S)

VERSUS

STATE OF MAHARASHTRA & ORS.

...RESPONDENTS

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**COMMON AFFIDAVIT IN REJOINDER ON BEHALF OF THE
APPLICANTS:**

I, Stalin Dayanand, aged 59 years, Indian inhabitant, Applicant No.2 and having office at Nandkumar Pawar House, Opp. Jagannath Darshan, M.D Kenni Road, Nahur (East), Mumbai- 400 042, do hereby solemnly state that I am filing this common affidavit-in-rejoinder as a response to the Affidavits-in-reply filed by the Respondent No. 6 and Respondent No.7.



1. At the outset, I deny each and every statements, allegations and averments made in each of the respective replies filed by the Respondent No. 6 and Respondent No.7 unless stated otherwise and that nothing should be deemed to have been admitted by me for lack of specific denial unless the same is specifically admitted by me herein.
2. I say that I shall now deal with each of the Affidavits-in-reply individually.

**I. AFFIDAVIT-IN-REPLY FILED BY MPCB
(RESPONDENT NO.6):**

3. I say that Respondent No.6 in its Affidavit-in-Reply dated 24/07/2024 has provided certain information which pertains to the actions taken by the Respondent No.6, however the same does not infer that compliance to order dated 27/02/2023 in E.A No. 12/2022 in O.A No.80 of 2022 and order dated 31/05/2021 in O.A No.80 of 2022 passed by This Hon'ble Tribunal has been effectively carried out and hence the same are responded hereinafter in concise manner.
4. With respect to Para No.1 of the Affidavit-in-Reply dated 24/07/2024 filed by the Respondent No.6, I say that the same is a formal paragraph and hence warrants no comments.



5. With respect to Para No.2 of the Affidavit-in-Reply dated 24/07/2024 filed by the Respondent No.6, I say that the same is a matter of fact and record and hence warrant no comments save and except the fact that any allegations, contentions, insinuations raised by the Respondent No.6 which are in nature prejudicial to the claims of the Applicants herein, the same is denied in toto.
6. With respect to Para No.3 of the Affidavit-in-Reply dated 24/07/2024 filed by the Respondent No.6, I say that the same is a matter of fact and record. However, I say that the Respondent No. 6 in its Affidavit-in-Reply has for the reasons best known to them, failed to provide the most essential observations and the directions passed by This Hon'ble Tribunal through its order dated 31/05/2021 in O.A 80 of 2020 (WZ) and the same are herein-below elaborated as follows:
- a. The object for which the aforesaid Expert Joint Committee was set up by This Hon'ble Tribunal was *inter alia* to ensure protection of environment in the process of aquaculture activities in waterbodies (other than those covered by the Coastal Aquaculture Authority Act, 2005) by use of modern techniques, particularly use of chemicals for which a study of the existing consent regime under the Water Act was necessary.



- b. The study ought to have been completed within a period of three months and report be furnished to the Secretary MoEF&CC and the Chief Secretary, Maharashtra for further remedial measure.
- c. On the basis of the aforesaid study, the permission granted to Respondent No.8 (Respondent No.7 in O.A 80 of 2020) may be appropriately revisited.
7. With respect to Para No.4 of the Affidavit-in-Reply dated 24/07/2024 filed by the Respondent No.6, I say that as per the directions passed by This Hon'ble Tribunal vide order dated 31/05/2021 in O.A 80 of 2020 (WZ), the Joint Committee were obligated to submit the Report within a period of three months i.e., to say by or before 02/12/2022. Pertinently, I say that the Applicants were in receipt of Affidavit filed by the Respondent No.7 dated 23/01/2023 which contained final Report dated 10/01/2023 before This Hon'ble Tribunal. I further say that the aforesaid Final Report had been filed by the Joint Committee after a delay of more than 16 months; which resultantly infers as non-compliance by the Respondent No.6. Hence, I say that the content of Para 4 is denied in toto.
8. With respect to Para No.4 (i), (ii), (iii) and Paragraph No.5 of the Affidavit-in-Reply dated 24/07/2024 filed by the Respondent No.6, I say that apart from the observations made by This Hon'ble Tribunal



vide order dated 27/02/2023 in E.A No.12 of 2022 being mentioned in the Respondent No.6's Affidavit-in-Reply, This Hon'ble Tribunal had directed the Respondent No.6 to furnish compliance Report before This Hon'ble Tribunal within 6 months i.e., by and before 27/08/2023, which the Respondent No.6 have failed to do so within the aforesaid stipulated period.

- With respect to a hearing opportunity being provided to Mr. Bhardwaj Y. Pagare which was dated 08/05/2023, the said timeline clearly reflects the unnecessary and unexplained delay and the laidback approach occasioned by the Respondent No.6 to even schedule a hearing after an expiry of more than two months since the passing of order by This Hon'ble Tribunal. As far as the information provided by the PP during the course of the hearing is concerned, the same does not *inter alia* in whatsoever manner infer that the Vadivale Lake is now pollution-free. For the aforesaid reason, I deny that compliance of the order dated 27/02/2023 passed by This Hon'ble Tribunal is carried out by virtue of scheduling a hearing as aforesaid by the Respondent No.6. At the outset, I further say that the Applicants are shocked to witness the fact that the use and existence of a floating toilet and use of diesel boats for this aquaculture activity inside the said Vadivale Lake seems to be an acceptable issue for the Respondent No.3 (fisheries department) which has championed the cause of "economic benefit" in its defense.



Annexed and marked as **Annexure A-1** is the photograph of the said toilet and boat house in the Vadivale Lake. I further say that the Applicants are apprehensive of the fact that lackadaisical and laidback approach of the Respondent Authorities have occasioned in similar type of polluting activity spreading in nearby drinking water reservoirs and is posing a threat to the health of all life forms dependent on the drinking water from the sites.

- With respect to convening a VC on 25/07/2023 is concerned, I say that by virtue of being a members of the Joint Committee it was incumbent upon the members of the Joint Committee including the Respondent No.6 to convene a Meeting. At the outset, as per the Order dated 27/02/2023 passed by This Hon'ble Tribunal, the Respondent No.6 was obligated to submit the Compliance Report by and before 27/08/2023 and hence convening a VC (after a delay of 5 months), does not infer that steps had been taken for compliance. I further say that the essence of compliance stems out simply by adhering to the stipulated timelines provided by This Hon'ble Tribunal, which time and again the Respondents have failed to adhere to. Hence for the aforesaid reasons, I deny that compliance of the order dated 27/02/2023 passed by This Hon'ble Tribunal is carried out by virtue of convening a VC dated 25/07/2023 of which Respondent No.6 is also a part.



- With respect to Respondent No.6's act of *inter alia* convening a meeting dated 21/09/2023 and proposing to categorize Cage Aquaculture Activity into new Green Category is concerned, the same cannot in whatsoever manner be inferred as appropriate steps and measures being taken by Respondent No.6 as the continuance of the aquaculture activity shall continue to pollute and degrade the Vadivale Lake. Hence for the aforesaid reasons, I deny that compliance of the order dated 27/02/2023 passed by This Hon'ble Tribunal is carried out by virtue of the Respondent No.6 holding meeting dated 21/09/2023 (after a delay of 7 months) and proposing to categorize Cage Aquaculture Activity into new Green Category.
- With respect to the act of ICAR-CIFRI providing Concept Note on "Environmental Impact Assessment of Cage Culture in Inland open Waters" vide email dated 29/08/2023 is concerned I say that by virtue of being the member of the Joint-Committee it was incumbent upon ICAR-CIFRI to provide the concept note. However, I further say that the said ICAR-CIFRI too have failed to adhere to the stipulated time-frame provided by This Hon'ble Tribunal vide order dated 31/05/2021 in O.A 80 of 2020 (WZ) and Order dated 27/02/2023 passed by This Hon'ble Tribunal in E.A No. 12/2022 in O.A No.80 of 2022. Hence for the aforesaid reason I deny that compliance of the order dated



27/02/2023 passed by This Hon'ble Tribunal is carried out by virtue of ICAI-CIFRI submitting concept note on "Environmental Impact Assessment of Cage Culture in Inland open Waters" vide email dated 29/08/2023. As far as the time-limit of 18 months and Cost of Study to the tune of Rs. 70.07 Lakhs is concerned, I say that the Applicants are highly apprehensive of the fact that 18 months' time-period for carrying out study will only cause further environmental degradation to the said Vadivale Lake and despite the cost of Rs.70.07 Lakhs, the damage that may be caused to the said Vadivale Lake, the aquatic species and to the human lives dependent upon the Vadivale Lake as source of drinking water; the same shall be irreparable. Furthermore, 18 months' time-period to conduct a study evidently establishes the laidback approach of the Respondent Authorities to adhere to the stipulated timelines as directed by This Hon'ble Tribunal. Hence for the aforesaid reasons, I say that the Respondent Authorities including the Respondent No.6 have failed to comply and adhere to the directions passed by This Hon'ble Tribunal vide Order dated 27/02/2023 passed by This Hon'ble Tribunal in E.A No. 12/2022 in O.A No.80 of 2022.

- With respect to the convening of VC meeting dated 14/06/2024 and the decisions taken therein and the subsequent VC meeting dated 03/07/2024 is concerned, I say that by merely conducting



meetings at regular intervals, the on the ground reality of the Vadivale Lake continues to remain the same. I further say that the Respondent Authorities including the Respondent No.6 are making futile attempts of misleading This Hon'ble Tribunal under the garb of conducting various VC meetings and purported study which have till date not commissioned in reality. For the aforesaid reasons, I say that the Respondents Authority including the Respondent No.6 are guilty of non-compliance of the order dated 27/02/2023 in E.A No. 12/2022 in O.A No.80 of 2022 and order dated 31/05/2021 in O.A No.80 of 2022 passed by This Hon'ble Tribunal which resultantly compelled to file the present Miscellaneous Application before This Hon'ble Tribunal. Despite of the aforesaid, the Respondent Authorities including Respondent No.6 fails to continue to address the severe concerns raised by the Applicants by using dilatory and delay tactics. For the aforesaid reasons, I deny that the Respondent No.6 has complied with the order passed by This Hon'ble Tribunal.

At the outset, I say that the Respondent No.6 has not only failed to undertake necessary measures and steps in order to protect and preserve the Vadivale Lake, but also the Respondent No.6 have time and again failed to adhere to the directions and the stipulated timeline passed by This Hon'ble Tribunal vide order dated 31/05/2021 in O.A 80 of 2020 (WZ) and Order dated



27/02/2023 passed by This Hon'ble Tribunal in E.A No. 12/2022 in O.A No.80 of 2022 and hence, under Section 28 of the NGT Act, 2010 action ought to be initiated against the Head of the Department of the Maharashtra Pollution Control Board for being guilty of such failure.

II. AFFIDAVIT-IN-REPLY FILED BY CPCB
(RESPONDENT NO.7):

9. I say that Respondent No.7 in its Affidavit-in-Reply dated 23/07/2024 has provided certain information which pertains to the actions taken by the Respondent No.7, however the same does not infer that compliance to order dated 27/02/2023 in E.A No. 12/2022 in O.A No.80 of 2022 (WZ) and order dated 31/05/2021 in O.A No.80 of 2022 (WZ) passed by This Hon'ble Tribunal has been effectively carried out and hence the same are responded hereinafter in concise manner.

10. With respect to Para No.1 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is a matter of fact and record and hence warrants no comments save and except the fact that any allegations, averments, contentions, insinuations made by the Respondent No.7 against the Applicants are denied in toto.



11. With respect to Para No.2 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is a formal paragraph and hence warrants no comments save and except the fact that any allegations, averments, contentions, insinuations made by the Respondent No.7 against the Applicants are denied in toto.
12. With respect to Para No.3 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that despite of Respondent No.7 being a Statutory Board constituted under Section 3 of The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986, the Respondent No. 7 has failed to comply to the directions and orders passed by This Hon'ble Tribunal vide order dated 31/05/2021 in O.A No.80 of 2022 (WZ) and order dated 27/02/2023 in E.A No. 12/2022 in O.A No.80 of 2022 (WZ) which resultantly compelled the Applicants herein to file the present Miscellaneous Application before This Hon'ble Tribunal.
13. With respect to Para No.4 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is a formal paragraph and hence warrants no comments save and except the fact that any allegations, averments, contentions, insinuations made by the Respondent No.7 against the Applicants are denied in toto.



14. With respect to Para No.5 (I) to (IX) of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is nothing but a repetitive statement made as has been made by the Respondent No.6 vide Affidavit-in-Reply dated 24/07/2024 which have already been responded in the aforesaid paragraphs of the present Rejoinder. I therefore say that for the want of repetition, the Applicants adopt the contents of the foregoing paragraphs in order to respond to the alleged compliances of the Respondent No.7 to the directions passed by This Hon'ble Tribunal vide order dated 31/05/2021 in O.A No.80 of 2022 and order dated 27/02/2023 in E.A No. 12/2022 in O.A No.80 of 2022.

15. With respect to Para No.6 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is a formal paragraph and hence warrants no comments save and except the fact that any allegations, averments, contentions, insinuations made by the Respondent No.7 against the Applicants are denied in toto.

16. With respect to Para No.7 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the Respondent No.7 has conveniently passed the buck on to the other Respondent Authorities herein and the same in what-so-ever manner absolve the Respondent No.7's obligation to *inter alia* ensure protect of the Vadivale Lake and to further comply to the directions and orders passed by This Hon'ble Tribunal vide order dated 31/05/2021 in O.A No.80 of 2022 (WZ) and



order dated 27/02/2023 in E.A No. 12/2022 in O.A No.80 of 2022 (WZ). For the aforesaid reasons, I say that the Applicants deny the entire paragraph in toto.

17. With respect to Para No.8 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is a formal paragraph and hence warrants no comments. As far as furnishing of the Report of the Expert Committee to the Secretary, MoEF&CC, New Delhi and Chief Secretary, Government of Maharashtra vide letter dated 23/01/2023 is concerned, the same only exposes the lackadaisical and laidback approach of the Respondent No.7 of failing to adhere to the stipulated time-period of furnishing the said Report within a period of Six months as had been directed by This Hon'ble Tribunal vide order dated order dated 31/05/2021 in O.A No.80 of 2022 (WZ). For the aforesaid I say that the Respondent No.7 has failed to comply to the order dated order dated 31/05/2021 in O.A No.80 of 2022 (WZ) as otherwise alleged by the Respondent No.7.

18. With respect to Para No.9 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is a formal paragraph and hence warrants no comments save and except the fact that any allegations, averments, contentions, insinuations made by the Respondent No.7 against the Applicants are denied in toto.



19. With respect to Para No.10 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is a formal paragraph and hence warrants no comments save and except the fact that any allegations, averments, contentions, insinuations made by the Respondent No.7 against the Applicants are denied in toto.

20. With respect to Para No.11 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the Respondent No.7's email representations dated 14/08/2023 and 28/08/2023 to the Respondent No.6 to take appropriate action does not absolve the Respondent No.7's obligation to adhere to the stipulated timelines directed by This Hon'ble Tribunal vide order dated 31/05/2021 in O.A No.80 of 2022 (WZ) and order dated 27/02/2023 in E.A No. 12/2022 in O.A No.80 of 2022 (WZ) which the Respondent No.7 have failed to adhere. Hence for the aforesaid reasons, I say that the Applicants were compelled to file the present Miscellaneous Application before This Hon'ble Tribunal.

21. With respect to Para No.12 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is a matter of fact and record and hence warrants no comments save and except the fact that any allegations, averments, contentions, insinuations made by the Respondent No.7 against the Applicants are denied in toto.



22. With respect to Para No.13 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is a formal paragraph and hence warrants no comments save and except the fact that any allegations, averments, contentions, insinuations made by the Respondent No.7 against the Applicants are denied in toto.

23. With respect to Para No.14 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that it could have been inferred that the compliance of the order dated 27/02/2023 passed by This Hon'ble Tribunal have been made had the Respondent Authorities including the Respondent No.7 adhered to the specific timeline directed by This Hon'ble Tribunal. I further say that convening a VC meeting after a delay of more than 9 months from the passing of the order dated 27/02/2023 passed by This Hon'ble Tribunal only reflects the lackadaisical and laidback approach of the Respondent Authorities including the Respondent No.7 which resultantly disregards the statutory obligations which the Respondent Authorities including the Respondent No.7 towards ensuring protection of the environment. Hence for the reasons aforesaid, I say that the Respondent No.7 has failed to comply to the order dated 27/02/2023 passed by This Hon'ble Tribunal, as otherwise claimed by the Respondent No.7.



24. With respect to Para No.15 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I say that the same is a formal paragraph and hence warrants no comments save and except the fact that any allegations, averments, contentions, insinuations made by the Respondent No.7 against the Applicants are denied in toto.

25. With respect to Para No.16 of the Affidavit-in-Reply dated 23/07/2024 filed by the Respondent No.7, I deny that the Respondent No.7 shall abide by any order(s) or direction(s) passed by This Hon'ble Tribunal in the present Miscellaneous Application- as otherwise claimed by the Respondent No.7; for reasons that compliance to order dated 31/05/2021 in O.A No.80 of 2022 (WZ) and order dated 27/02/2023 in E.A No. 12/2022 in O.A No.80 of 2022 (WZ) passed by This Hon'ble Tribunal is not effectuated till the present date which resultantly compelled the Applicants to file the present Miscellaneous Application before This Hon'ble Tribunal. For the aforesaid reasons, I say that the Applicants deny the contents of the said para in toto.

26. In light of what is stated hereinabove, I say that the instant deserves to be allowed with heavy costs on the officers of Respondent Authorities and the prayer clauses (i) to (viii) be allowed to protect the Vadivale Lake at Village Valavanti, situated in Pune District of Maharashtra.



Solemnly affirmed at Mumbai)

Dated This 4th day of November 2024)

[Signature]
Zamanz Ali
Advocate for the Applicants

[Signature]
Applicant No.2
[Stalin Dayanand]

Before me

BEFORE ME
[Signature]
S. K. TAMBAWALLA
ADVOCATE, HIGH COURT
B-23, Taheri Manzil
Nesbit Road, Mazgaon
Mumbai - 400 010
4.11.24



NOTARY & REGISTERED
20804 dt 4.11.24
Sr. No.....





NOTARY
SHABERK, TAMBANULLA
AREA (GREATER MUMBAI)
Regd. No. 6308
GOVT. OF INDIA

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BEHALF OF THE APPLICANTS.**

Dated This 4th Day of November, 2024.

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