

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

In the matter of:
OA No. 628/2024

Alok Mohan

Applicant

Versus

Escorts Kubota Ltd

Respondent No. 2

Faridabad.

Subject: Reply to Preliminary Objections Raised by Respondent No. 2.

Dear Sir,

In response to the submission by Respondent No. 2 dated December 24, 2024, I respectfully present the following points for your kind consideration:

1. Clarification on Manufacturing Activities: Respondent No. 2's defense, focusing on the operations of Escorts Tractors Ltd from 1960 to 2016, appears to divert attention from the current environmental concerns associated with the activities of Escorts Kubota Ltd's, since 2016.

2. Maintainability of the Application:

Alleged Inaccuracy and Misleading Nature: The claims that my application contains inaccuracies are unfounded. My concerns are based on direct experiences and observations of environmental degradation caused by the operations of Escorts Kubota Ltd, a Red Category (Dangerously Polluting) industry, in close proximity to residential areas. Presumably, adverse health effects have started emerging among newborns as well as elderly people, which should be substantiated by records from the Faridabad civic authorities.

3. Substantial Environmental Questions: The application raises significant issues related to air and water pollution, noise pollution, and public health risks. These concerns are well-documented and fall within the scope of environmental law, warranting judicial intervention to safeguard public health.

4. Alleged Suppression of Information: The accusation that I withheld information about the facility's location is baseless. The proximity of Escorts Kubota Ltd, a dangerously polluting industry, approximately 100 meters from my residence, is a matter of record. Attempts to attribute pollution to the national highway, situated

nearly 1,000 meters away, are misleading and do not absolve the respondent of responsibility.

5. Historical Context of Industrial Operations: While industrial activities Escorts Tractors, may have commenced in the 1960s, this does not exempt the respondent from complying with contemporary environmental standards. The evolution of environmental awareness necessitates adherence to current regulations to prevent further harm.

6. Limitation Period for Filing the Application: The assertion that the application is time-barred is incorrect. The environmental damage caused by Escorts Kubota Ltd's operations is ongoing, directly affecting my health and well-being. Therefore, the application is within the permissible time frame under the National Green Tribunal Act, 2010.

7. Applicant's Settlement and Pre-existence of the Industrial Unit: The fact that I relocated to this residential area post-retirement, does not diminish the legitimacy of my concerns. The escalation of environmental impacts since the establishment of Escorts Kubota Ltd in 2016-17 substantiates the cause for action, independent of my re-settlement date, in civil sector.

8. Limitation Period under Section 14(3) of the National Green Tribunal Act, 2010

The Respondent's assertion that the application is time-barred under Section 14(3) is unfounded. Environmental harm resulting from the industrial unit's operations is ongoing, constituting a continuous cause of action. The National Green Tribunal Act, 2010, acknowledges that applications should be made within six months from the date on which the cause of action first arose, with a permissible extension of up to sixty days if justified.

Given the persistent nature of the environmental damage, the cause of action is renewed daily, rendering the application timely and within the statutory period.

9. Applicant's Long-Term Residence

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The duration of my residence is irrelevant to the environmental concerns presented. The persistent pollution and its detrimental effects on health and the environment are substantial issues that warrant the Tribunal's attention, irrespective of my length of stay in the area.

10. Allegations Regarding Reliefs Sought

The Respondent's suggestion that the reliefs sought are attempts to secure unlawful advantage is baseless. My requests stem from genuine grievances due to significant environmental harm caused by the Respondent's industrial operations. Seeking relocation and other remedies is a legitimate response to the adverse impact on my health and quality of life.

11. Request for Compensation for Health Issues and Resettlement

The claim that my request for compensation constitutes "blackmail" is strongly refuted. The continuous exposure to pollutants from the Respondent's facility has adversely affected my health, entitling me to seek compensation under environmental law. The National Green Tribunal is empowered to address such ongoing environmental issues and provide appropriate relief.

12. Jurisdiction of the Tribunal

The Respondent's contention that the matter falls outside the Tribunal's jurisdiction is incorrect. The National Green Tribunal has clear authority over cases involving substantial environmental questions, including industrial pollution and its impact on public health. Therefore, the Tribunal is competent to adjudicate this matter.

13. Limitation Period under Section 15(3) of the National Green Tribunal Act, 2010

The Respondent's argument regarding the five-year limitation period under Section 15(3) is misplaced. Given the ongoing nature of the environmental harm, the cause of action is continuous, and the application is timely. The Tribunal has the discretion to entertain applications beyond the prescribed period if sufficient cause is shown.

14. Buffer Zone and Jurisdiction

The concerns about the absence of a proper buffer zone between the industrial facility and residential areas are legitimate environmental issues. The lack of adequate separation exacerbates pollution and poses health risks to residents. The National Green Tribunal is well within its jurisdiction to address these concerns and provide necessary remedies.

The Respondent's assertion that the obligation to maintain the buffer zone rests solely with the Urban Department (Colonizer) is unfounded. While planning and development authorities are involved in establishing such zones, the operator of an industrial facility bears the responsibility to ensure its operations do not adversely affect the environment and public health. The facility's proximity to residential areas has directly contributed to the Applicant's grievances. Therefore, it is incumbent upon the Respondent to mitigate environmental damage resulting from its operations, including compliance with buffer zone requirements where applicable.

The Applicant did not relocate to the premises intending to challenge industrial activities but was compelled to voice concerns due to negative impacts on health and quality of life caused by industrial pollution. The absence of an adequate buffer zone exacerbates these issues, necessitating the Tribunal's intervention.

15. Jurisdiction of the Tribunal

The Respondent contends that jurisdiction over the alleged buffer zone violations lies exclusively with authorities under the Haryana Development and Regulation of Urban Areas Act, 1975. This perspective is incorrect. While urban planning matters fall within local authorities' purview, environmental concerns stemming from industrial pollution, including buffer zone compliance and public health implications, squarely fall under the National Green Tribunal's (NGT) jurisdiction. The NGT is

empowered to adjudicate issues related to environmental harm, particularly those affecting individuals residing near industrial operations.

Respondent No. 2 references the Hon'ble High Court of Bombay's ruling in *Central India Ayush Drugs Manufacturers Association v. State of Maharashtra* (2016) to support their claim. However, that case pertained to matters not directly impacting the environment. In contrast, the current case involves substantial environmental concerns due to ongoing pollution from Respondent No. 2's facility, significantly affecting the environment and public health. Therefore, this matter appropriately falls within the NGT's jurisdiction, as it involves substantial questions relating to environmental issues as outlined in Section 14 of the NGT Act, 2010.

16. Nature of the Complaint

The Applicant's environmental concerns extend beyond urban planning; they pertain to direct environmental harm. The air, water, and noise pollution resulting from EKL's operations have a tangible and detrimental impact on the Applicant's health and quality of life. The Tribunal is well within its jurisdiction to adjudicate these concerns, as they are rooted in environmental law and regulations rather than urban development or zoning issues.

17. EKL Corporate Structure

The Applicant acknowledges the corporate restructuring involving Respondent No. 2, including the amalgamation of Escorts Kubota Limited (EKL), Escorts Kubota India Private Limited (EKIL), and Kubota Agricultural Machinery India Private Limited (KAI). However, environmental harm caused by these entities' industrial operations has persisted regardless of corporate changes. The amalgamation does not absolve Respondent No. 2 of responsibility for ongoing environmental pollution affecting the local community, including the Applicant. The operations of these industrial units have been causing harm to the environment and public health, and this harm must be addressed irrespective of corporate restructuring. The appropriate entity—whether EKL, EKIL, or the newly amalgamated entity—must be held accountable for its environmental obligations.

18. Applicant's Allegations of Environmental Pollution

The Applicant has raised specific allegations regarding pollution caused by Respondent No. 2's industrial operations:

Air Pollution: The facility allegedly uses hazardous chemicals such as NO_2 , HNO_3 , and H_3PO_4 for cleaning stainless steel parts, with resulting fumes released through exhaust vents facing the residential area. These emissions contribute to high Air Quality Index (AQI) levels (361), posing health risks. These allegations are based on the Applicant's observations and environmental impacts.

Water Pollution: The industrial unit's extensive chemical use purportedly leads to pollutants draining into the groundwater, contaminating the water supply. Given the

serious concerns regarding groundwater contamination and its long-term health risks, this issue warrants thorough investigation and remedial action by the Tribunal.

Noise Pollution: Concerns have been raised about noise pollution from heavy-duty vehicles operating to and from the industrial unit. This noise significantly impacts residents' quality of life, contributing to stress and health issues.

Buffer Zone Non-Compliance: The industrial unit allegedly fails to maintain the required minimum buffer zone of 500 meters from the residential area. This proximity exacerbates environmental harm, and non-compliance with buffer zone requirements constitutes a clear violation of environmental norms, which the Tribunal has the authority to address.

19. Response to Allegations of Air, Water, and Noise Pollution

The Applicant contends that Respondent No. 2's responses inadequately address the environmental risks impacting the local community:

Air Pollution: The Respondent has not provided sufficient evidence demonstrating that emissions comply with environmental standards or are below harmful levels as required by law. The Consent to Operate Certificate (CTOC) lacks specific details on chemical emissions and their dispersion near residential areas. The Applicant requests detailed, justifiable data regarding emissions and their impact on local air quality.

Water Pollution: While the Respondent claims no trade effluent discharge, it does not address potential chemical leakage or improper disposal practices that could harm groundwater resources. The Applicant requests a comprehensive environmental impact assessment (EIA) to ascertain potential risks to water quality caused by the facility's operations.

Noise Pollution: The Respondent's claims of compliance with noise regulations lack supporting monitoring data or proof of consistent adherence to permissible limits. The Applicant requests evidence of noise level monitoring and compliance with the Noise Pollution (Regulation and Control) Rules, 2000.

20. Nature of Operations at the EKL Facility

Regardless of whether the facility engages in manufacturing or modification, the associated emissions, discharges, and noise remain significant concerns. The Applicant requests a full environmental audit to assess these impacts.

21. Investment and Workforce at EKL

The substantial investment and workforce at the EKL facility do not absolve the Respondent of its responsibility to ensure environmentally compliant operations. The Applicant requests evidence demonstrating how these investments and operations

comply with environmental norms and minimize their impact on nearby residential
Traffic-Related Air Pollution

The Applicant acknowledges that both vehicular traffic on NH44 and the 100 ft wide road, as well as industrial activities, contribute to local air pollution. Studies have shown that traffic congestion increases vehicle emissions, degrading ambient air quality and posing health risks to nearby residents.

The Applicant requests that the Hon'ble Tribunal consider both industrial and vehicular pollution when assessing the overall air quality impact on the local community.

Further Investigations on Air Quality

Given concerns about industrial emissions and vehicular pollution, the Applicant requests an independent air quality assessment encompassing all pollution sources, including the industrial facility, generator sets, and nearby highway traffic. This comprehensive evaluation will clarify each source's contribution to local air quality deterioration.

22. Response to Respondent No. 2's Allegations Regarding Water Pollution

No Trade Effluent and Recycling of Domestic Sewage

While Respondent No. 2 claims the absence of trade effluent and the recycling of domestic sewage for gardening, the Applicant emphasizes that this does not eliminate potential risks from chemical discharges or leaks that could affect groundwater. The Applicant requests a comprehensive environmental audit to ensure no hazardous substances are inadvertently released into the environment.

23. STP Outlet Monitoring and Compliance

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 Respondent No. 2 has provided a report indicating that STP outlet water meets prescribed limits. The Applicant requests periodic monitoring reports and details of any corrective actions taken for deviations in water quality. Additionally, independent reviews of future water quality reports are sought to verify accuracy.

24. Verification of Water Recycling and Usage

The Applicant seeks clarification on the methods used for recycling domestic sewage for gardening, including treatment processes, quality monitoring, and potential contamination risks to nearby water sources. Transparency in recycled water usage and thorough assessment of any risks to local groundwater are requested.

25. Response to Self-Monitoring and Borewell Water Quality

While Respondent No. 2's borewell water quality report indicates compliance with prescribed limits, the Applicant submits that monitoring should extend to surrounding groundwater and surface water to assess the cumulative impact of industrial processes. Periodic additional monitoring is requested to ensure no long-term detrimental effects on water quality.

26. Recycling of Domestic Sewage and Sludge Disposal

The Applicant acknowledges the recycling of domestic sewage and disposal of sludge per hazardous waste regulations. Periodic reports confirming compliance with environmental laws and ensuring no inadvertent release of hazardous materials into the environment are requested.

27. Response to Allegations of Noise Pollution

Noise Pollution from Heavy-Duty Vehicles

The Applicant maintains that noise from heavy-duty vehicles within the EKL facility affects surrounding residential areas. While adjacent roads contribute to noise pollution, the Applicant's concern focuses on noise generated by operations within the industrial premises. Separate measurement of industrial operation noise from general vehicular noise is requested, as internal noise may exceed permissible limits.

28. Noise Pollution from Adjacent National Highway

Acknowledging that nearby roads contribute to noise pollution, the Applicant submits that the industrial facility must still comply with noise pollution regulations. Consideration of the cumulative impact of both traffic and industrial noise on local residents is requested.

29. Noise Monitoring Report

Respondent No. 2's noise monitoring report indicates compliance with permissible limits. The Applicant requests a review of the sampling methodology, including sample locations, to ensure adequate assessment near residential areas. An independent noise audit is also requested to verify findings and ensure effective noise pollution control.

30. Response to Operations at EKIL Facility- Operations at EKIL Facility

The Applicant acknowledges that EKIL's operations involve painting and assembly of tractor parts, with no manufacturing activities. Clarification is requested regarding the environmental impact of these operations, particularly concerning chemicals used in the painting process. Details on chemical usage, disposal methods, and measures to prevent environmental release of harmful substances are sought.

31. Compliance with Statutory Norms for EKIL

While EKIL holds a valid Consent to Operate Certificate (CTOC), the Applicant requests detailed information on specific thresholds and limitations regarding air and water emissions to ensure compliance with environmental norms.

32. Response to Waste Management and Pollution Control Mechanisms

(Effluent and Sewage Treatment Systems)

The Applicant acknowledges the installation of Effluent Treatment Plant (ETP) and Sewage Treatment Plant (STP) at the EKIL facility. Evidence of regular monitoring, including discharge quality and compliance with permissible limits, is requested to ensure no adverse environmental impact.

33. Generator Sets and Pollution Control Devices

While EKIL has installed generator sets with pollution control devices, the Applicant submits that independent verification through comprehensive monitoring is necessary. Continuous air quality monitoring, especially near residential zones, is requested to ensure compliance.

34. Air Quality Monitoring Reports

Respondent No. 2's reports indicate compliance with air quality standards. The Applicant requests scrutiny of these reports to ensure representative monitoring, particularly near residential areas. Independent verification of monitoring methods, sample locations, and laboratory reports is sought, along with frequent unannounced air quality checks to ensure ongoing compliance.

35. Response to Allegations of Air Pollution –

(Air Pollution from Generator Sets and Painting Process)

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The Applicant acknowledges measures in place to control emissions from generator sets and the painting process. However, concerns about residual emissions persist. Rigorous monitoring of air quality levels in the plant's vicinity is requested to ensure pollutant levels remain within permissible limits.

36. Effectiveness of Fume Suppression and Treatment

While fume suppression measures are appreciated, the Applicant requests detailed reports on their efficiency, maintenance frequency, and cleaning procedures.

Assessment of treated water quality post-fume capture is also sought to ensure it meets disposal or reuse standards.

37. Self-Monitoring Reports "Air Pollution"

Respondent No. 2's self-monitoring reports indicate compliance with air quality standards. The Applicant notes that self-monitoring may not fully reflect long-term or

cumulative environmental impacts. Independent third-party monitoring and periodic environmental audits are requested to ensure transparency and accuracy.

38. Effluent and Sewage Treatment Compliance

The Applicant acknowledges that the EKIL facility has a CTOC in place and that the facility is treating both trade and domestic effluents within the prescribed limits. However, the Applicant requests that the Hon'ble Tribunal orders further investigation into the continuous quality of treated water to ensure no harm is being caused by the discharge, especially to the public sewer systems. The reports from Arihant Analytical Laboratory indicate compliance, but ongoing monitoring should be mandated to ensure long-term compliance with all water quality standards.

39. Sludge Disposal

The Applicant appreciates that the sludge generated during ETP and STP processes is being disposed of appropriately under the Hazardous Waste Management Rules. However, the Applicant requests a report outlining the quantity, disposal methods, and environmental impact of the sludge to ensure full compliance with environmental norms.

40. Conclusion

The Applicant respectfully submits that the objections raised by Respondent No. 2 are without merit and do not affect the maintainability of the original application. The concerns raised regarding environmental harm, pollution, and the failure to adhere to legal obligations under environmental law remain valid and should be addressed by the Hon'ble Tribunal to ensure that appropriate action is taken. In light of the above, the Applicant requests that the Hon'ble Tribunal reject the preliminary objections. The Applicant respectfully submits that the claims made by Respondent No. 2 regarding air, water, and noise pollution are insufficient to dismiss the application. The pollution from the EKIL industrial facility continues to be a serious concern for the health and well-being of the surrounding community, and further investigations and actions are required to ensure full compliance with environmental laws. The Applicant urges the Hon'ble Tribunal to intervene and ensure that the Respondent takes effective steps to mitigate the pollution and its impact on the environment and residents.

41. In light of the above, the Applicant respectfully submits that the preliminary objections raised by Respondent No. 2 must be rejected, as they are without merit. The application raises legitimate environmental concerns that warrant consideration and adjudication by this Hon'ble Tribunal.

[CDR. ALOK MOHAN]

DATE: 26 Dec 2024
PLACE: FARIDABAD