

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

INTERLOCUTORY APPLICATION NO. 127 OF 2023

IN

APPEAL NO. 5 OF 2023

IN THE MATTER OF

Sahakar Maharshi Shivajirao

Narayanrao Nagawade SSK Ltd.

... Appellant

V.

MPCB & Ors.

... Respondents

IN THE MATTER OF

Mr. Sachin Sudamrao Pachpute

...Applicant (Intervener)

REPLY ON BEHALF OF THE APPELLANT
TO THE INTERVENTION APPLICATION

ADVOCATE FOR THE APPELLANT:

ADV. SANGRAMSINGH R. BHONSLE

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Place: Pune

Date: 17.08.2023



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**REPLY ON BEHALF OF THE APPELLANT
TO THE INTERVENTION APPLICATION.**

To,

THE HON'BLE CHAIRMAN AND

HIS HON'BLE COMPANION MEMBERS

OF THE NATIONAL GREEN TRIBUNAL,

THE HUMBLE REPLY OF THE APPELLANTS ABOVENAMED:

MOST RESPECTFULLY SHOWETH

1. The Present Appeal has been filed by the Appellant u/s 16 (c) of the National Green Tribunal Act, 2010 r/w section 33-B (c) of the Water (Prevention and Control of Pollution) Act, 1974 challenging the order dated 09.01.2023 passed by

the Respondent No. 1 while exercising the Powers u/s 33A of the Water (Prevention and Control of Pollution) Act, 1974 r/w Environment Protection Act, 1986. Vide the Impugned Order, the Respondent No.1 has calculated a compensation of amount Rs. 84,70,000/- to be levied upon the Respondent No. 1 in terms of the Order dated 10.11.2022 in OA No. 85 of 2022 passed by this Hon'ble Tribunal.

2. This Hon'ble Tribunal vide its Order dated 09.02.2023 in the present Appeal was pleased to admit the present Appeal. Further, it was assured on behalf of the Respondent No. 1 and Respondent No. 2 that No Coercive steps would be taken for realization of the environmental compensation in terms of the Impugned Order.
3. The Applicant (Intervener) is the Original Applicant in OA No. 85 of 2022. The Impugned Order was passed by the Respondent No.1 in terms of the Order dated 10.11.2022 in OA No. 85 of 2022 passed by this Hon'ble Tribunal. Thus, the Intervener also seeks to Intervene in the present Appeal vide the present application in Appeal No. 5 of 2023.
4. At the outset it is stated that all the contentions, allegations and statements made by the Applicant (Intervener) in the present Intervention Application are false, baseless and frivolous and thus, are denied. Nothing in the present Intervention Application shall be deemed to be admitted by the Appellant for the reason of non-traverse or otherwise unless specifically admitted herein.

PRELIMINARY OBJECTIONS

5. It is submitted that the Applicant (Intervener) has already filed an OA No. 85 of 2022 before this Hon'ble Tribunal and is assisting this Hon'ble Tribunal with the facts and circumstances regarding the present case. Thus, no purpose shall be served by Intervention of the Applicant (Intervener) in the Appeal. If, the present Intervention Application is allowed the same would lead to burden the docket of this Hon'ble Tribunal due to reiteration of facts and contentions in the present Appeal. Thus, in such circumstances the Intervention of the Applicant (Intervener) is futile. Furthermore, the Appellants u/s 16(c) of the National green Tribunal Act, 2010 have invoked the Appellate Jurisdiction of this Hon'ble Tribunal and in terms of Section 18(2)(e), the Applicant (Intervener) in the present Application is not a person aggrieved by the Impugned Order and therefore, as such has no *locus standii* to intervene in the present Appeal.
6. The main thrust of the contentions raised by the Applicant thereby allegedly raising the intricate question of maintainability vide the present Intervention Application is that, although, the Impugned Order was not specifically issued u/s 31 A of the Air Act, and the same is issued only u/s 33A of the Water Act r/w Environment Protection Act, the same has to be read as a composite order under Air Act and Water Act and therefore the present appeal is not maintainable in terms of the Judgement dated 18.02.2023 in Civil Appeal No. 4763 of 2023 i.e TNPCB v. Sterlite Industries (I) Ltd. & Ors.
7. On perusal of the application as filed by the Applicant (Intervener) it is clear that the contentions raised by the Applicant (Intervener) are merely based on presumptions and surmises. The Impugned Order as passed by the Respondent No.1 clearly mentions the subject to be

“Directions u/s 33A of the Water (Prevention and Control of Pollution) Act, 1974 read with Environment (Protection) Act, 1986 towards Environmental Compensation (EC) as per Hon’ble NGT Orders.”

Further, on a bare reading of the Impugned Order dated 09.01.2023 it is clear that the Respondent No. 1 has not even uttered a word about the Air Act. Thus, the bare reading of the Impugned Order as a whole makes it clear that the Respondent No. 1 intended to pass the orders only under the Water Act. Merely because similar directions can be issued under the Air Act does not mean the directions might have been passed also under the Air Act. Such assumption on the part of the Applicant vide the present application is totally misconceived and is not tenable in law. Since, it has been established that the Impugned Order as passed by the Respondent No.1 is passed only under the Water Act, the arguments of Applicant (Intervener) based on the Judgement of Sterlite Industries (supra) are not maintainable.

8. **PARA WISE REPLY**

- i. The contents of para 1 are part of the record and thus, need no reply.
- ii. In terms of para 2 it is stated that the Applicant is already assisting this Hon’ble Tribunal in O.A No. 85 of 2022 (WZ), however, the intervention of the Applicant is uncalled for.
- iii. The contents of para 3 (A) to 3 (C) and 3 (E) are part of the record and need no reply. In terms of para 3 (D) it is stated that the Applicant have failed to bring on record any copy of the Complaints filed before the Respondent No.1. Thus, the Contentions in para 3 (D) are denied.
- iv. The contents of para 4 (A) is a complete disarray of facts. Moreso, the contents of para 4 (A) are self-contrary to the statements made by the Applicant vide para 2 of the present Application. Be that as it may, the Respondent No. 1 vide the Impugned Order has calculated the environmental damage assessment

regarding the blast occurred on 10.02.2022 in the premises of the Appellant. Further, as stated by the Applicant himself in para 2 of the present Application the Impugned Order was issued referring to OA no. 85 of 2022. Thus, the contents of para 4 (A) are frivolous and self-contrary and therefore the same are denied.

- v. No doubt, that it is a settled principle of law, that a composite Order passed under the Air Act and the Water Act cannot be challenged u/s 16 of NGT Act in an appeal before this Hon'ble Tribunal. However, in the present case, the Impugned Order has been passed only u/s 33 A of the Water Act r/w Environment Protection Act, and thus the present appeal u/s 16 C of the NGT Act is maintainable and the law laid down by the Hon'ble Supreme Court by the Judgement of Sterlite Industries (Supra) shall not be applicable to the facts and circumstances of the present case. The mention of the direction dated 09.02.2022 passed by the Respondent No. 1 is nothing but an attempt of the Applicant to mislead this Hon'ble Court and thus, contents of Para 4 (B) are denied.
- vi. The contents of para 4 (C) are denied in totality as the same have no connection with the present Appeal and the same are put without any context.
- vii. The contents of para 4 (D) have been aptly replied by the Appellant herein above vide paras 6, 7 and 8 (v) of the present reply and the Appellant seeks to rely upon the same and thus the contents of para 4 (D).
- viii. In terms of para 4 (E) it is stated that in the case referred by the Applicant i.e. Order dated 10.08.2022, the Order that was under challenge was a composite Order under the Air Act and the Water Act. In the present case the Impugned Order has been clearly passed under the Water Act r/w Environment Protection

Act and the same if not a composite order. Thus, the reliance of the Applicant on order dated 10.08.2022 passed by this Hon'ble Tribunal in Appeal No. 11 of 2022 is erroneous and thus the contents of para 4 (E) are denied.

- ix. In para 4 (F) the Applicant relies on the Judgement of Mantri Tech Zone to state that non mentioning of a particular provision of law would not be of any relevance. However, in the present case the Impugned Order clearly mentions that the Impugned Order was passed under the Water Act. Thus, the Respondent No.1 in its own wisdom has passed directions only under the Water Act and the Applicant cannot presume that, the said Impugned Order is also passed under the Air Act. Thus, the contents of para 4 (F) and 4 (G) are denied.
- x. The contents of para 4 (H) are denied.
- xi. The contents of para 4 (I) need no reply.
- xii. The contents of para 4 (J) and para 4 (K) are not sustainable in terms of facts and contentions raised hereinabove.

9. REPLY TO PRAYERS

In terms of the facts stated, contentions raised and arguments advanced hereinabove the prayer of the Applicant in I. A No. 127 of 2023 (WZ) for Intervention are not sustainable in the eyes of law and are contrary to the settled principle of law and thus same ought to be dismissed.

Place: Pune

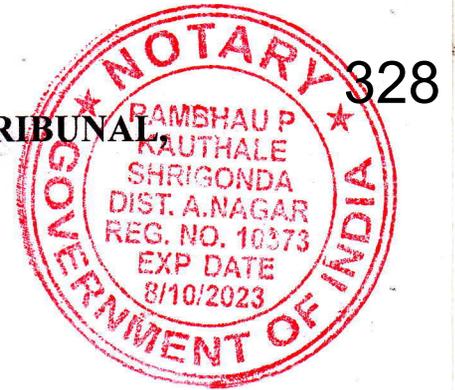
Date: 17.08.2023



Advocate for the Appellants

NOTED & REGISTERED AT.
SERIAL NO. 1326/2023

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH
AT PUNE
APPEAL NO. 05 OF 2023

Between

Sahakar Maharshi Shivajirao
Narayanrao Nagawade SSK Ltd.

...Appellant

Versus

MPCB & Ors.

...Respondents

AFFIDAVIT

I, Shri. Rahul Satish Shete, Age: about 34 years, Occ: Employment, Having Office at: Shrigonda Factory, Taluka: Shrigonda, Dist: Ahmednagar, 413726 do hereby solemnly affirm and state as under:

1. That I am the Representative of the Appellant in the abovementioned Appeal and as such I am conversant with the facts and circumstances of the case and am competent to swear to this affidavit.
2. That I have read the contents of the accompanying Reply, the same being drafted by my Counsel under my instructions and that the contents of Paras 1 to 9 of the present Reply are true to my knowledge and that I have not suppressed any material fact.
3. That the annexures filed along with the reply are true copies of their respective originals.


DEPONENT

VERIFICATION

Verified at Shrigonda on this 10th day of August 2023 that the contents of the present affidavit are true and correct and nothing material has been concealed therefrom.




DEPONENT



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BEFORE ME

Solemnly affirmed before me
 by Rahul Suresh Shete
 who is identified before me
 by M.D. Kumbhar
 whom I personally know.

I Know attiant



BEFORE ME

RAMBHAU P. KAUTHALE
 NOTARY PUBLIC, GOVT. OF INDIA
 SHANI CHOWK, SHRIGONDA
 TAL. SHRIGONDA, DIST. A. NAGAR
 MOB: 9423463092 / 9595373537

17 AUG 2023



Service: Reply in I.A. No. 127 of 2023 in Appeal No. 05 of 2023 (WZ) between M/s Shahakar Maharashi Shivajirao Narayanrao Nagawade SSK Ltd. v/s MPCB & Ors. pending before the Hon'ble National Green Tribunal, Western Zone (Pune)

1 message

Adv Sangramsingh R Bhonsle <srb.chambers@gmail.com>

Thu, Aug 17, 2023 at 7:19 PM

To: aniruddha1488@gmail.com, Sachin Pachpute <sachinpachpute77@gmail.com>

Cc: Sangramsingh Bhonsle <sangramsinghbhonsle@gmail.com>

Sir,

We are the Advocates appearing on behalf of the Appellant in the abovementioned matter. We are filing a Reply in I.A. No. 127 of 2023 in Appeal No. 05 of 2023 (WZ) on behalf of the Appellant.

Please find attached herewith the copy of the same and consider this email as the service of the same on your esteemed office.

Regards,

Sangramsingh R. Bhonsle

Advocate

Supreme Court of India

A-10, LGF, Lajpat Nagar III,

New Delhi - 110024.

Mob- 9545809120

 **Final Reply in IA in Appeal 5-2023 (1).pdf**

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