

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH AT NEW DELHI

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O.A. No. 64 of 2016 (WZ)

Akhil Bhartiya Mangela Samaj Parishad Applicant

V/S.

Maharashtra Pollution Control Board & Ors Respondents

REJOINDER AFFIDAVIT

TEPS's OBJECTIONS TO COMMITTEE'S REPLY

FILED IN M.A. NO. 01 OF 2021

(Pursuant to Order dated 07.06.2021)

I, Mr. Gajanan Sahebrao Jadhav, Age- 52 years, Occ- Service, in capacity as Plant Manager and as the authorised signatory of the Tarapur Environment Protection Society (TEPS) i.e. Respondent No.3 herein, having office at Plot No.AM-29, MIDC-Tarapur, Dist-Palghar, Respondent No. 3 in the present case, do hereby solemnly affirm and state as under: -

I SAY THAT

1. Pursuant to leave granted by this Hon'ble Tribunal vide Order dated 07.06.2021, TEPS is submitting its Rejoinder/ Objections to the Reply dated 13.05.2021 filed by Expert Committee in M.A. no. 02 of 2021.



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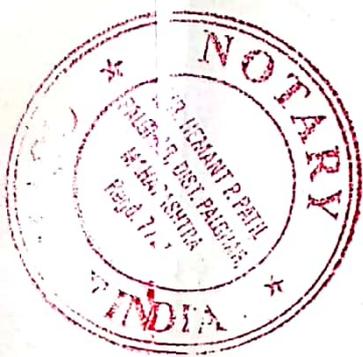


2. Since the Committee has adopted most of contents of its Reply to TIMA objections as part of Reply to TEPS objections, TEPS seeks leave of this Hon'ble Tribunal to adopt contents of the TIMA's rejoinder affidavit being executed and filed simultaneously, as part of its Rejoinder to Committee's reply dated 13.05.2021. However, at the cost of repetition, TEPS submits its parawise reply, which is as follows.

3. It is submitted that three comments / admissions on part of the Committee effectively render the its own Report nugatory and liable for a complete re-assessment:

a. At pg. 6, it has been noted that there are multiple methods to assess the compensation, one of which is the PPP method. Under this method, the total amount has been assessed at Rs. 27.04 crores whereas the MER method adopted by the Committee results at an amount of Rs. 85.042 crores. No specific reason has been assigned as to why the higher of the two amounts has been adopted. On the other hand, TEPS has already submitted in its objections that the MER method is based upon a Spanish study of 2010, which cannot be made applicable under Indian situation. Keeping in mind the purchasing of power in India, it is the PPP method, which alone may be adopted for the present case and therefore, the total compensation would reduce substantially.

b. At pg. 13 of the Committee's Reply, it has been admitted that the concept of 'Super Fund' is a novel concept for the Indian environmental statutory regime. It is submitted the any compensation towards restitution of environment (as in the present case) is regulated by sections 15 to 17 of the NGT Act read with Rules 35 to 37 of the NGT (Practice and



Procedure) Rules, 2011. Since these provisions do not provide for a fund like 'Super Fund', the same cannot be introduced by the Committee. It is submitted that Super Fund assessment at Rs. 75 crores, having no statutory basis, is liable to be deducted from the overall assessment.

- c. At pg. 23 of the Committee's Reply, it has been suggested that MPCB may re-examine cases of individual units for errors with regard to apportionment of liability. Since grave errors have been shown by TEPS in this regard, the exercise by MPCB is extremely relevant. This Hon'ble Tribunal, vide order dated 07.06.2021, directed the MPCB as under:

"... .. It is further pointed out by learned counsel that the revised estimate on compensation is to be worked out by Maharashtra State PCB. The Committee may provide its response, if any, on this aspect before the next date."

It is submitted that so far Committee has not responded on this issue. TEPS understands that the MPCB has undertaken exercise of reexamining the records and re-apportionment of liability after correcting errors with regard to individual units, including that of TEPS as detailed in its objections filed under M.A. No. 01 of 2021.

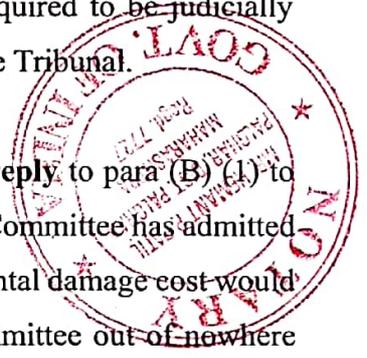
4. **Objection to PART – I of Committee's Reply are as under: -**
As regards para 1 to 4 of Committee's reply to para (A) 1 (a) to (f), TEPS adopts contents of TIMA's rejoinder / reply to Committee's Reply. TEPS states that Committee has admitted various discrepancies in the MPCB data and reports. There is also a confirmation from the Committee that there are incidences of SSI units discharging into CETP in excess of their prescribed norms but such units being given blanket exemption only for the



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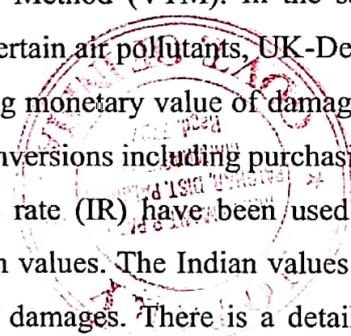
reason that their discharge was within prescribed inlet standards of CETP. This proposition is not legal or tenable. CETP receiving excess effluent than its treating capacity is not a fault attributable to the TEPS and we no liability arises to M/s. TEPS. It may also be seen at page 70 para 2 of the Report that Committee had left it to the discretion of MPCB to examine the matter and take appropriate decision in exempting such exceedance cases of SSI units. It is matter of record that there is no formal decision on this aspect from MPCB. Expert Committee's recommendation that CETP be held responsible for violations of such SSI units is certainly violation of established principles of environmental law, including Polluter Pays principle. Hence criterions at point (i), (ii) and (iv) on page 71 of the Report are required to be judicially examined and struck down by this Hon'ble Tribunal.

- As regards para 1 to 3 of Committee's reply to para (B) (1) to (3) (a) to (h) of the TIMA objections, the Committee has admitted that by applying PPP index the environmental damage cost would substantially come down. However, Committee out of nowhere suggested CoT method and shown equivalent figures. While doing so Committee has conveniently excluded treatment cost incurred by CETP i.e., M/s TEPS. It also transpires that the said methods are focused on finding cost of treatment of the effluent which in-fact is not relatable to the exercise of identifying and ascertaining an actual environmental damage, if any. It is further surprising to note that, the Committee has admittedly mentioned use of the said MER, PPP, CoT formulae with a view to provide avenues of improvement of environmental infrastructure in Tarapur Region and have further suggested that, funds collected through such compensation be used for carrying out



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infrastructural projects. This proposition is not legal and is in-fact contrary to Sec.15 of NGT Act and various rules framed thereunder related to recovery of environmental damages. TEPS has already vehemently objected to application of Spanish formula for assessment of damages in the present case. TEPS further respectfully submits that, in a case of more serious nature, in O.A. No. 22 of 2020 where this Hon'ble Tribunal was pleased to appoint an Expert Committee under the Chairmanship of Justice B. C. Patel, Former Chief Justice of Delhi High Court, assisted by various scientists and expert institutes like NEERI, IIT and CPCB has acted as a nodal agency. In an Additional Report dated September 2020, the said Committee has mentioned very clearly use of PPP adjustment factor while doing economic valuation through Value Transfer Method (VTM). In the said Report while deriving values for certain air pollutants, UK-Defra values were adopted for calculating monetary value of damages. However, suitable econometric conversions including purchasing power parity (PPP) and inflation rate (IR) have been used to convert UK defra values to Indian values. The Indian values so arrived are used for valuation of damages. There is a detailed discussion in the said Report in so far as how the damage valuation has been arrived at for each pollutant after applying appropriate conversion formulae for Indian context. TIMA, without admitting any liability and without prejudice to its other contentions/ objections, places its reliance on the said Report in O.A. No. 22 of 2020 (also filed by Expert Committee with CPCB acting as a nodal agency) for limited extent of showing how PPP and IR are factors considered relevant by the experts in the industry for assessment of environmental damage and to further submit that there has to be some parity and standardization

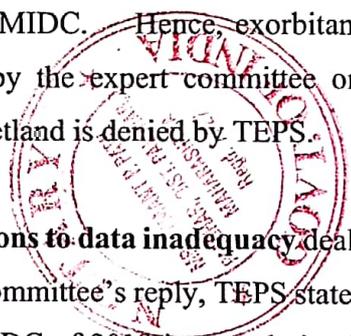


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amongst functioning of these Committees undertaking task of assessing environmental damage at polluted sites.

6. As regards issue of **wetland** dealt in para 4 to 7 on page 7 and 8 of Committee's reply, TEPS reiterates its stand that there is no notified wetland in Tarapur MIDC or any of the discharge points examined by the committee. Since there are different parameters for assessing damage to the wetland and those applicable to sea and creek area, damage calculations substantially differ. Also, it is specifically denied that the discharge points are in any eco-sensitive zone. It is further denied that, there is any adverse impact on Mangroves or other water bodies viz. creek, intertidal zone, CRZ etc. TEPS further states and submits that, laying of effluent carrying pipelines, maintaining discharge of effluent at a safe distance inside the sea and ensuring protection of coastal areas is specific duty and responsibility of MIDC. Hence, exorbitant claim of about 79 Crores raised by the expert committee on account of alleged damage to the wetland is denied by TEPS.

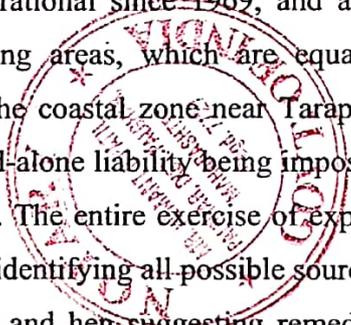
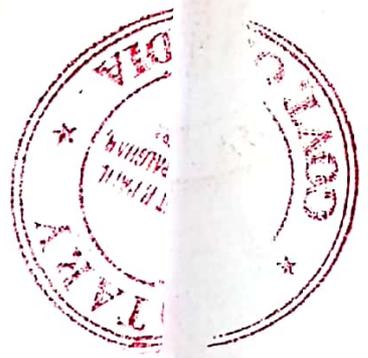
7. As regards issue of **multiple objections to data inadequacy** dealt in para 8 to 13 on page 8 and 9 of Committee's reply, TEPS states that, the CEPI score of Tarapur MIDC of 2018 is not admitted. Current CEPI score of Tarapur MIDC is 53.60 which is substantial improvement achieved by the authorities due to constant environment protection efforts implemented by the stakeholders including the industries and CETP. Action plan for Tarapur Industrial Cluster dated Feb 2019, as published by MPCB (Reference Page 43 to 49 of the said Action Plan) are relevant for finding correct CEPI score values for Tarapur. The said Report also acknowledges efforts of various member industries and



TEPS-CETP which has resulted in improvement of environment of Tarapur. TEPS further states that, the results of random sampling at Tarapur MIDC as given in the Committee's Report do not suggest any irreparable damage to the water bodies. In-fact a comparative study with remote location of Edvan beach at 85 km away in-fact suggests that the levels found at Tarapur MIDC or adjoining areas are not very different than the said non-industrial beach location.

8. TEPS further objects to alleged reference and reliance of the Committee upon satellite imagery, to conclude about level of pollution. TEPS has time and again pointed out that, there are domestic untreated effluents which are far in excess of the industrial treated effluents passing through the same storm water bodies meeting at the same discharge point. TEPS has also informed about existence of a government run Tarapur Atomic Power Station in its vicinity operational since 1969, and also human establishments in adjoining areas, which are equally contributing to the discharge in the coastal zone near Tarapur. Hence TEPS does not accept stand-alone liability being imposed on TEPS and/or its member units. The entire exercise of expert Committee needs to be redone by identifying all possible sources of pollution existing as on today and then suggesting remedial action plan. Under pretext of precautionary principle, such ad-hoc damage assessment and apportionment of liability only on select few units while ignoring all other possible sources of pollution should not be accepted by this Hon'ble Tribunal.

9. As regards issue of **error by duplication and overlapping of BOD and COD** dealt in para 14 to 18 on page 9 and 10 of



Committee's reply, TEPS states that, the Committee has given no specific reply on the point of duplication of damage. It is therefore stated that, alleged excess discharge cannot be treated simultaneously as discharge into sea and creek. The Committee has repeatedly admitted lack of scientific and baseline data. Thus, imposing penalties by duplicating damages should be judicially examined and be struck down. It is further submitted that, the alleged statement that the present estimate of damages is only a conservative one and may further increase after a comprehensive study is a vague and unacceptable proposition, since this will always keep a hanging sword of further claims being made against the TEPS CETP under one pretext or the other. TEPS has time and again stated that, in absence of any definitive action plan and well identified project costs, there is no question of any claims or demands that this Hon'ble Tribunal should entertain as against the member industries. There is no provision in the current Indian Environment Law regime akin to imposing of tax on industrial units for carrying out future environmental projects by the regulatory authorities.

10. For the reasons stated herein before TEPS strongly objects to the **concept of Super Fund**, admittedly being introduced by the Expert Committee. Para nos.1 to 3 as appearing between page 10 to 12 of Committee's reply are vehemently denied and opposed by TEPS. TEPS states that, the Committee has indicated that it has only done a prima facie examination and study and that quantification of pollution including delineation of the contaminated areas and areas needing remediation; detailed site investigation & characterization; risk assessment studies & identification of remediation goals/objectives and preparation of

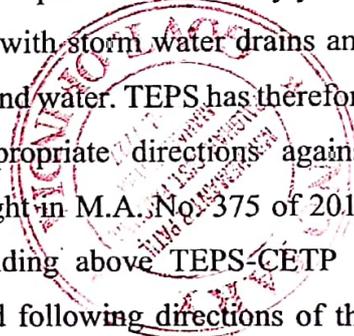
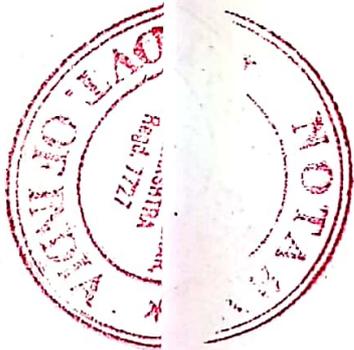


remediation plans thereof; selection of remediation criteria; outlining remediation options and preparation of detailed technical document with specifications for the selected remediation option; are subsequent steps in scientifically management of contaminated sites. As part of restoration measures, the Committee has recommended Phase-I work which includes the said activities by preparing Detailed Project Report (DPR) followed by execution of the selected remediation plan as Phase-II work. However, nowhere in the entire Report or in their say to the objections that Committee has sufficiently explained calculation of Rs. 75 Crores as a Super Fund. There are no estimates or any project details whatsoever and hence such recommendation of collecting huge sums of money from the industries on an ad-hoc basis is completely illegal and baseless and should accordingly be dealt by this Hon'ble Tribunal while considering the Report. For the same reason para 1 to 8 appearing on page 13 to 15 of Committee's reply is hereby challenged. In para 4 there is admission on part of Committee that the concept of Super Fund is alien to the Indian environmental statutory regime. It is further surprising to note that a huge amount of Rs. 75 crores which the Committee trying to justify as a financial resource for the government bodies to implement remedial action plan, is being also treated as an initial amount. Such casual attitude of the Committee in recommending collection of such huge amounts of money, without providing any calculations whatsoever, certainly needs to be discarded by this Hon'ble Tribunal.

11. On the issue of **Ground Water contamination** (on Pg. 12 and 13 of the Committee's Reply), TEPS categorically denies that the same is being caused for its fault. It is further categorically denied



that the samples and study of the Committee is more comprehensive than the MPCB study etc as alleged. It is denied that the locations from where samples are collected by the Committee are recognised sources of drinking water for the population in the vicinity. TEPS states and submits that the adjoining villages have a regular water supply from local government, which is sourced from Surya river, far away from any of the said locations of sample collection. Be that as it may, TEPS has time and again invited attention of this Hon'ble Tribunal to the issue of breach by MIDC of its duties to maintain in proper condition, all the infrastructure and pipelines for carrying and safely disposing the treated effluent into the sea. TEPS states that there are numerous instances every month reported by MIDC itself about damage or leakages in the effluent carrying pipeline network which is under control and management of MIDC. This has over a period of last many years, resulted in certain effluents mixing with storm water drains and resultantly to some extent in the ground water. TEPS has therefore been consistently demanding appropriate directions against MIDC including the directions sought in M.A. No. 375 of 2017 filed in the said OA. Notwithstanding above TEPS-CETP is taking all appropriate measures and following directions of the regulatory bodies for protections of ground water in Tarapur MIDC area. TEPS hereby assures this Hon'ble Tribunal that it shall work in collaboration with the Committee and other Regulatory bodies for restoration of the ground water wherever it is found to be not potable and the cause is directly linked to the effluents generated from Tarapur MIDC.



12. TEPS objects to the reply of the Committee on the point of **Fiscal Discounting** (Pg. 16 and 17 of the Committee's Reply), and adopts contents of TIMA's Rejoinder as part of its present reply.

13. As regards Reply on the point of **factual errors and erroneous methods, calculation of number of violation days etc.** in Para 11 and 12 appearing on Pg. 23 of the Report, the Committee has shown its willingness to reconsider all the cases. To the knowledge of the TEPS, MPCB officials are already carrying out the said exercise of reassessment, since certain glaring defects and errors are admitted by MPCB, which have also hampered the correctness of the Committee's Report.

14. Reply of the Committee as appearing on Pg. 24 and 25 on the **issue of apportionment of liability and MIDC's responsibility**, TEPS (Respondent No.3) adopts its original objections under M.A. No. 01 of 2021, wherein TEPS has detailed out effluent management system at Tarapur, how it functions, what are roles and responsibilities of MPCB and MIDC as regulators, about limitation of powers and authority with TEPS. Committee in their Reply have conveniently ignored the said details and have covered-up various defaults and breaches of MIDC. It is pertinent to note that the original Applicant had sought majority prayers against the MPCB and MIDC, who are contesting respondents. It also may be noted that MIDC has remained absent throughout the final hearing stage and also has neither been called by the Committee to provide any details nor are they held accountable for over supply of water, or various reported leakages in the effluent carrying pipelines under MIDC's management and control. Committee has further



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ignored the tasks which Committee had itself assigned to the MIDC as part of immediate restoration / correction plan, even which remain unfulfilled by MIDC. TEPS thus invites attention of this Hon'ble Tribunal on this important issue, which if not addressed now, will perpetually adversely impact any restoration plan or environment protection measures implemented by the other stakeholders.

15. As regards other Reply statements appearing on Page 25 and 26 of the Committee's Reply, Part-A have no merit and they stand sufficiently rebutted as per the original objections as well as rejoinder reply given hereinbefore. Issue of Bank Guarantee, needs a specific reply from MPCB, who have collected and/or forfeited the said amounts. If the penalty was for the same violation, there can not be double penalty, now under the present OA.

16. This Hon'ble Tribunal may also consider giving due weightage to the huge amounts spent by TEPS on implementing SCADA system as well as cost in excess of Rs. 160 Crores incurred for construction of new 50 MLD plant which are to be treated as costs incurred for environment protection infrastructure being developed by M/s. TEPS in collaboration with its member industries.

Rejoinder to PART – II of Committee's Reply are as under

17. Wherever Committee has adopted contents of its Reply to TIMA objections as its Reply to TEPS Objections raised under M.A.



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No. 01 of 2021, the contents of Para 1 to 16 hereinabove may please be read and treated as Rejoinder of TEPS.

18. As regards Para 3 Page 27 & Para 5 Page 28, the reply of the Committee is not in accordance with law and **Polluter Pays principle**. There is no denial of the fact that TEPS is a effluent treatment unit and is not a cause for any effluent generation. It has been repeatedly stated by TEPS that effluent reaching its plant, in excess of its treating capacity is not a fault attributable to TEPS. TEPS has taken every measure and effort to adhere to conditions as specified in its Consent to Operate. For the same reason, TEPS also objects to its **categorisation as LSI/ Red category. TEPS can not be equated with the manufacturing polluting unit**. For the said reason Para 6 of the Committee Reply is objected. As regards Para 7, TEPS has already submitted and referred to relevant papers viz. its past consent to operate, pendency of application for renewal of consent to operate, which was pending for consideration of regulators during the said period and subsequently granted.

19. As regards Para 8 Page 28 of Committee Reply, **on the issue of apportionment of liability**, TEPS relies on established principles of law and precedent case laws. This Hon'ble Tribunal may also please refer to its own Order dated 08.06.2020 passed in O.A. No. 22 of 2020 (WZ) and its Order dated 11.01.2019 in **Vapi Green Enviro Case** wherein it has been observed and recommended that frequent failures of Regulatory bodies need to be remedied for meaningful enforcement of environmental norms. This Hon'ble Tribunal has also referred to Order dated 04.01.2019 in **Garø Hills District case**, where need to hold the

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state machinery accountable and to make them pay for their default and negligence has been highlighted.

20. As regards Para 9, Page 28 of the Committee Reply **on issue of non-consideration of investments made by TEPS in new 50 MLD state of art CETP**, it is submitted that the Committee has made self-contradictory statements. On one hand, Committee while justifying concept of Super Fund states that the said amount shall be available to State Authorities for carrying out future infrastructure projects, and on the other, it refuses to consider huge amounts of infrastructural development costs already incurred by TEPS for becoming future ready in terms of its treating capacity. This issue is serious and Hon'ble Tribunal is requested to give due weightage, importance and consideration to the 50 MLD plant commissioned by TEPS.

21. In reply to Paras 10 to 16 of the Committee Reply Part II, TEPS adopts the reply / rejoinder presented by TIMA.

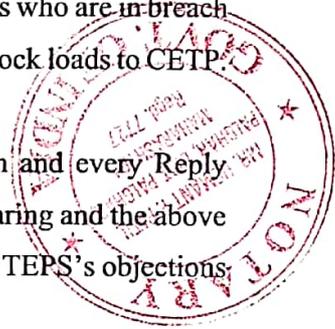
Rejoinder to PART – III of Committee's Reply are as under

22. As regards Committee's Reply to the Objections of TEPS dated 01.04.2021 filed in response to Compliance Report dated 11.01.2021 filed by the Committee, TEPS denies any averments made therein against TEPS. As regards issue of Restoration Plan, TEPS reiterates its objection that there is no definitive restoration plan except for immediate remedial measures suggested by the Committee. Committee has left it vague and open ended as Phase II work to be decided after preparation of DPR etc. However, no outline of any work or project has been stated. Committee be

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made to present before this Hon'ble Tribunal their alleged Restoration Plan. As regards, immediate remedial measures, TEPS has complied with all major actionable items that were assigned to it. There were also certain actionable items assigned to MIDC, such as sludge removal etc. which are fulfilled and completed by TEPS at its own costs and expenses. TEPS is committed to work in collaboration with the Authorities as well as any Expert Committees in a more meaningful and inclusive manner, for which this Hon'ble Tribunal needs to direct MIDC to timely provide all infrastructural support and further direct MPCB to strictly deal with any defaulting units who are in breach of their effluent limits, which causes excess shock loads to CETP.

- TEPS shall deal in further details, with each and every Reply Statement of the Committee, at the time of hearing and the above Rejoinder may please be read as highlights of TEPS's objections to the Committee Reply dated 13.05.2021.



WHATEVER STATED BY ME IN PARA 1 TO 23
 HEREINABOVE IS TRUE AND CORRECT TO THE BEST OF MY
 KNOWLEDGE, INFORMATION AND BELIEF AND AS PER THE
 RECORDS AVAILABLE WITH THE RESPONDENT NO. 3 AND
 IN WITNESS WHEREOF I HAVE SIGNED HEREUNDER ON
 THIS DAY OF JUNE 2021 AT TARAPUR, DIST-PALGHAR

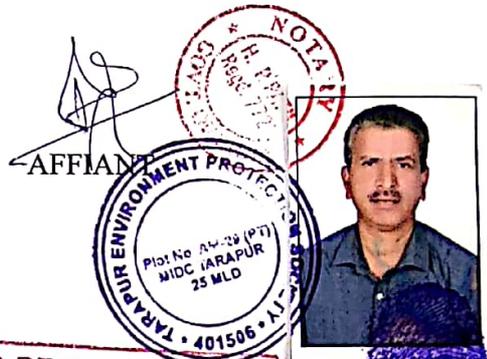
I KNOW THE RESPONDENT
 WHO SIGNED BEFORE ME
 Witness as to signature only
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BEFORE ME

H. Hemant P. Rathil

MR. HEMANT P. RATHIL

29/6/2021

**ADVOCATE & NOTARY
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AFFIANT

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Government of India

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Gajanan Sahebrao Jadhav
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पुरुष/ MALE

Download Date: 11/03/2021

Issue Date: 10/01/2016

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माझे आधार, माझी ओळख

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