

Before The Hon`ble National Green Tribunal (Western Zone Bench),

Pune at Pune

Original Application No. 84 of 2019

(Arising out of Writ Petition No. 11120 of 2019)

Between

Mr Vinaykumar Vitthalrao Jathar..... Applicant

Versus

State of Maharashtra and others..... Respondents

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Pune

Date- 24/09/2020

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**(WESTERN ZONE BENCH), PUNE, AT: PUNE****Original Application No. 84 of 2019****(Arising out of Writ Petition No. 11120 of 2019)****Between****Mr Vinaykumar Vitthalrao Jathar.****... Applicant****VERSUS****State of Maharashtra and others.****... Respondents****Affidavit in Rejoinder to the reply filed by the****Respondent No. 11 dated 31/08/2019.**

I, Vinaykumar Vitthalrao Jathar, Age: 43, Occu: Doctor, Agriculturist & Social Activist, R/O: Bankar Nagar, Shrigonda, Tq: Shrigonda, Dist: Ahmednagar, Maharashtra, do hereby state on solemn affirmation as under,

1. I say that, the Original Application was initially filed by the applicant as a Writ Petition before the Hon'ble High Court at Bombay at Aurangabad bench Under Article 226 read with other articles of the Constitution of India. The Hon'ble High Court vide its order dated 09/09/2019 was pleased to transfer the same to this Hon'ble Tribunal.

2. I say that, above-mentioned Original Application was listed for admission before Hon'ble Tribunal on 05/12/2019 and the Hon'ble Tribunal after hearing the applicant and respondent no. 11 was pleased to constitute a Committee comprising of i) the Chief Conservator of Forests (wildlife), Pune, Maharashtra, ii) Collector, Ahmednagar, iii) Conservator of Forest of the concerned circle/area and iv) senior representative of the State Pollution

Control Board. The Chief Conservator of Forest, (wildlife), Pune, Maharashtra is the nodal agency. The Committee was directed to visit the area in question, verify on the factual aspects set out in the Original Application and at the site in the light of the records available in respect of the area and submit report. That the Committee was also directed to take appropriate action in accordance with the law against respondent, in the event the allegations are found to be correct and action taken report was directed to be submitted on the next date.

3.I say that, then, the Original Application was listed on 05/02/2019 for filing the report but the time was sought by the Committee to file the report and thereafter time was granted.

4.I say that, that Original Application was then listed on 16/07/2020 but on that day also report as directed was not submitted hence, Original Application was again adjourned to 02/09/2020 and on that day, it is reflected in the order of the Hon'ble Tribunal that, the report as directed is submitted on 01/09/2020 but neither the copy of the same is served on applicant nor is uploaded on official website.

5. I say that, the applicant is seeking three-fold reliefs against the respondent no.11 and the same is demonstrated again as follows:

(i) That the applicant is seeking revocation of consent dated 18/05/2018 granted to respondent no.11 for establishing the 26 Mega Watt Co-generation electricity project on the ground that it is situated within the Eco-Sensitive Zone of the Great Indian Bustard Sanctuary and particularly at Gat no. 52/2 of the village Limpingaon, Taluka-Shrigonda, Dist-Ahmednagar, Maharashtra without obtaining prior permission from National Board for wildlife which is mandatory requirement and further without obtaining environment clearance.

(ii) Applicant is seeking direction of immediate stoppage of work and closure of the said project in addition to the cancellation of consent to establishment dated 18.05.2018.

(iii) That the respondent no. 11 has acquired 36 hectores of forest land at Gat no.52/1 of village Limpangaon, Taluka- Shrigonda, Dist- Ahmednagar illegally by exchanging the same with private lands in contravention of the provisions of the Forest (Conservation) Act, 1980 and hence, applicant is seeking the direction of transmission of the said 36 hectares land for forest department.

6. That I say that, the respondent no. 11 has filed its reply on 31/08/2020 and the copy of the same is served on applicant on 01/09/2020 and in view of the same applicant is filing the present rejoinder.

7. Para-wise rejoinder to the reply filed by respondent no. 11:

Rejoinder to para. Nos.1-3 of the reply affidavit.

The contentions raised by the respondent No. 11 in the reply dated 31/08/2020 are false and misleading and no part there of deemed to be admitted by the applicant unless specifically admitted in the present rejoinder. The contentions of para 1 are partly true and correct however, it is submitted that the respondent no. 11 has wrongly mentioned in the said para that applicant has stated that Co-generation plant is situated at Survey number 51/1 of Village Limpangaon, Taluka-Shrigonda, Dist- Ahmednagar. It is submitted that applicant has categorically pleaded in the Original Application that said Co-generation plant is situated at Gut number 52/2 of Village Limpangaon, Taluka-Shrigonda, Dist- Ahmednagar and not on Survey Number 51/1. It is submitted that the respondent number 11 is intentionally trying to create confusion in respect of Gut numbers 52/1 and 52/2 of the said village. Gat Number 52/1 is "Reserved



Forest”, where there is illegal exchange of land, whereas Gat Number 52/2 is “Eco-Sensitive Zone”, where Co-generation plant is established. The contentions of para 2 of the reply is matter of record and doesn't need specific reply. The contentions of para 3 of the reply are not true and correct and the preliminary objection in respect of maintainability of the Original Application is not well founded and even otherwise, this Hon'ble Tribunal, when, on 05/12/2019 heard the matter, this objection of maintainability of Original Application was raised by the respondent no.11, but the Hon'ble Tribunal while rejecting the same directed the constitution of Committee. Applicant is also dealing with the issue of maintainability in detail in later paras of this rejoinder.

7a. I say that, that the contentions of para 3(a) of the of the reply are partly true and correct. It is submitted that, it is correct that the applicant has prayed to declare the permission granted to Co-generation project of the respondent no. 11 bad and illegal and in contravention of Forest (conservation) Act, 1980 and guidelines dated 09/02/2011 and 15/03/2011. It is further submitted that apart from the revocation of permission dated 18/05/2018, the applicant in prayer clause “C” of Original Application has sought prohibition order against the respondent no.11 from carrying out further construction/erection work of 26 MW Co-generation power plant.

7b. I say that, the contentions in para 3(b) are matter of record and do not need reply.

7c. I say that, the contentions in para 3 (c) are provisions of law and doesn't need reply.

7d. I say that, the contentions in para 3(d) are also provisions of law and doesn't need reply.



7e. I say that, contentions of para 3(e) to (i) of the reply are not true and correct. That the contentions of para 3(e) to (i) are in respect of applicant not challenging the “consent to establish” dated 18/05/2018 before the Appellate Authority as per the provisions of S. 28 of Water (Prevention and Control), Act 1974 and S. 31 of the Air (Prevention and Control), Act 1981. That the applicant is dealing with the said contentions together. In this context, at the outset, it is submitted that applicant is not only challenging the “consent to establish” dated 18/05/2018 granted to the respondent no. 11, but also seeking prohibition order for carrying out further constructions of the said project which is situated within the Eco Sensitive Zone of the Sanctuary without taking prior approvals from authorities as per the provisions of various environmental laws. It is further submitted that the Maharashtra Pollution Control Board by notice to the respondent no. 11 on 19/01/2019 directed to “stop the work” for violating the conditions of the consent and directed to obtain environment clearance from competent authority and written permission from the board. However, without paying any heed to said notice the respondent no. 11 carried on the constructions of the project. I say that, said aspect of progress of work is reflected in the visit report of the officials of the Maharashtra Pollution Control Board dated 31.07.2019. And therefore, relief at prayer clause “C” claimed by the applicant is prohibitory and requires the respondent no. 11 to comply with the conditions of the “consent to establish” and to take precautionary steps in the interest of Environment and Ecology. And therefore, it is not necessary for applicant to challenge the “consent to establish” dated 18/05/2018 in Appeal. It is further submitted that, the project is within the Eco Sensitive Zone of the Sanctuary and is carried out without taking prior environmental clearance/permission and in spite of “stop work” directions, this itself is part and



parcel of the environmental violation and is a substantive dispute regarding environment. Therefore, the original application is not only maintainable U/s.14 but even U/s 15 of the NGT Act and applicant can directly approach the Hon`ble Tribunal.

Rejoinder to para. No. 4 of the reply affidavit.

8a. I say that, the contentions of para 4 and 4(a) of the reply are not true and correct and objection in respect of limitation is also not well founded. That the contentions in respect of prayers are partly correct. It is submitted that apart from the said prayers, the applicant at prayer clause "E" has sought the directions for transmission/ hand over of forest lands to the forest department from possession of the respondent number 11 being procured illegally by violating the provisions of the Forest (Conservation) Act, 1980. The said prayer clause "E" is reproduced below:

Issue of appropriate writ, order or directions the lands to the extent 36 Hectors situated in land Gut Number 52 /1 at Village Limpangaon, Taluka Shrigonda, District Ahmednagar as reflected in exhibit "H" may forthwith be transmitted or handed over in possession of the Forest Department.

8b. I say that, the contentions of para 4 (b) and (c) of the reply are in respect of limitation. It is submitted that respondent number 11 contents that, the applicant is impugning the order dated 18/05/2018 and therefore contents that, Original Application originally being filed as Writ Petition before the Hon`ble High Court on 03/09/2019 is barred by time as per the provisions of section 14 of the National Green Tribunal Act, 2010, as it is filed beyond the period of six months limitation. It is the contention of the respondent no. 11 that the cause of action first arose on 18/05/2018, when "consent to establish" was granted to respondent number 11. That before proceeding to deal with the said



contentions, some dates and events are important with the issue in hand and said dates and events are as follows:

Sr. No.	Date	Event
1	18/05/2018	The respondent no. 3 and 4, MPCB accorded "consent to establish" the Co-generation power project of the respondent no. 11 at Gut number 52/2 of the village-Limpangaon, Tal-Shrigonda, District-Ahmednagar, Maharashtra.
2	01/11/2018	Notice in respect of public hearing regarding the objections of establishment of the said Co-generation project of the respondent no. 11 was published in daily newspaper. This was first time when applicant gained knowledge about order dated 18.05.2018 (<i>said public notice is annexed with the Original Application at exhibit "Q" page number 179A</i>)
3	28/11/2018	Applicant filed detail representation with respondent authorities regarding the objections for establishment of the said Co-generation project and also in respect of illegal exchange of the forest lands with private lands (<i>said representation is annexed with Original Application at exhibit "Q" page number 183A</i>)



4	01/12/2018	Public hearing was conducted by the Committee and in the said public hearing also objections regarding establishment of the Co-generation project was raised by the applicant. Public hearing concluded without taking any decision. <i>(Minutes of the said public hearing are annexed to the Original Application at exhibit "T" page 187)</i>
5	19/01/2019	The respondent nos. 3 and 4 MPCB issued directions for stoppage of the work of said Co-generation project of the respondent no. 11 observing that respondent number 11 has completed more than 50% of the work of installation of co-generation plant without obtaining prior environmental clearance and violated the consent of establish granted by the board. The said directions were given by board after applicant had raised the said objections in public hearing conducted on 11/12/2018. <i>(said directions/notice dated 19/01/2019 are annexed with Original Application at exhibit "V" page 197)</i>
6	13/08/2019	Since, applicant found that in spite of the "stop work" directions, the respondent no. 11 has carried on the work of establishment of the project, he filed an application under Right to Information Act with MPCB enquiring and for providing the visit reports of MPCB to the project from the date 20/01/2019 to



		13/08/2019 (said application filed under Right to Information Act is annexed with Original Application at exhibit "W" page 199)
7	23/08/2019	Applicant received the information under Right to Information Act and received copies of visit reports dated 28/05/2019 and 31/07/2019 by the MPCB to the project and after receipt of the said information, applicant found that on 28/05/2019, 60-65% of the co-generation project work was completed. Visit report dated 28.05.2019 mentions that E.C. is not granted. Even on visit 31/07/2019 the work of the project was going on and representative of Resp. No. 11 informed that work would be completed in 6 weeks. (said visit reports are annexed with original application at exhibit "W" page 199.)
8	03/09/2019	After collecting the documents under R.T.I. act the applicant approached the Hon'ble High Court, Bombay, bench at Aurangabad by filing Writ Petition U/A. 226 of the Constitution of India on legal advice since applicant was informed that theNGT, Pune bench was not functional.

8c. I say that, in this context, it is submitted that, from the dates and events mentioned above, it is clear that, cause of action only arose when the respondent number 11 did not obey the "stop work" directions dated 19/01/2019 issued by the respondent numbers 3 and 4, MPCB and same came



to the knowledge of the applicant on 23/08//2019, when applicant received the visit reports dated 28/05/2019 and 31/07/2019 under Right to Information Act. It is further submitted that “stop work” order dated 09/01/2019 and further visit reports of MPCB dated 28/05/2019 and 31/07/2019 fully substantiate the plea of the applicant that the construction activity was going on even when directions to stop the same were issued by the MPCB and therefore, it is submitted that it is a case of “continuing or recurring cause of action” relatable to the environmental issues.

8d. I say that, the present Original Application was earlier filed as WritPetition before the Hon`ble High Court on 03/09/2019 is within the prescribed period of 6 months in terms of section 14 of the National Green Tribunal Act,2010 and limitation would trigger from each of the date mentioned above, last being 23/08/2019, when, the applicant received visit reports dated 29/05/2019 and 31/07/2019 from the MPCB under Right to Information Act. In this context, it is further submitted that, in case of “cause of action first arose” has completely a distinct and different role while computing the period of limitation. Whenever subsequent act or subsequent breach is complete and its consequences are different, then action would enable an applicant to bring cause before this Hon`ble Tribunal on strength of subsequent cause of action. Therefore, violation claimed by the applicant in this application relates to 26 MW co-generation project within the Eco-Sensitive Zone of the Sanctuary without taking prior environmental permissions and carrying on with the said construction even after directions of stoppage of work by the MPCB is an independent cause of action,

8e. I say that, therefore, limitation would have to be counted from the date when applicant gained the knowledge under the information of the visit reports



from the MPCB i.e. on 23/08/2019 and it is therefore it submitted that, the cause of action cannot be held arisen on 18/05/2018, when “consent to establishment” was granted as disputes raised essentially an environmental dispute which related to one of the scheduled acts of National Green Tribunal Act, 2010 and therefore, application is not barred by time and its perfectly within the limitation. Even otherwise, the present application should not be considered an application simpliciter under S.14 of NGT Act. It is U/s. 15 as well, as specific prayers have been made with prohibition of construction of project within Eco-Sensitive Zone and re-transfer of forest land acquired illegally for maintaining the sensitive area in its natural condition so that ecological balance of the area is not disturbed so limitation U/s 15 of NGT Act is 5 years and therefore, on this count also present application is well within limitation. It is submitted that the learned counsel for Resp.No.11 before the Hon’ble High Court had only pointed out about availability of alternate remedy before this Hon’ble forum and had not objected on the ground of limitation. Thus, having done so, the Respondent No.11 should be presumed to have waived the right to raise the ground of limitation now before this Hon’ble court. The principle of “waiver” perfectly applies in this matter.

8f. I say that, the contentions of para 4 (d) of the reply do not disclose the complete information and are misleading. It is contended by respondent number 11, that the applicant has sought appropriate directions to set aside the mutation entries annexed at exhibit “G” of the application. It is further contended by the respondent number 11 that, the issue pertaining to cancellation of mutation entries in land record is an issue which is not part of enactments specified in schedule I of the NGT Act, 2010 and therefore, Tribunal has no jurisdiction to adjudicate the same. In this context, firstly, it is submitted that the applicant has



sought two reliefs for the illegal exchange of forest lands with private lands by the respondent number 11 and the said prayers are reproduced below:

Prayer Clause "D"

Issue of writ of certiorari or any other appropriate writ, order or directions in the nature of certiorari thereby quashing and setting aside the impugned mutation entries annexed at exhibit "G" to the to this petition being illegal and contrary to the provisions of Forest (Conservation), Act.

Prayer Clause "E"

Issue of appropriate writ, order or directions the lands to the extent 36 Hectors is situated in land Gut number 52/1 at village Limpangaon, Taluka-Shrigonda, District- Ahmednagar as reflected in exhibit "H" may forthwith be transmitted or handed over in possession of the Forest Department.

It is therefore, further submitted that, apart from seeking directions for setting aside the mutation entries, applicant at prayer clause "C" is also seeking directions for transmission/handover of forest lands in possession of respondent number 11, being procured illegally in contravention of the Forest (Conservation), Act 1980.

8g. I say that, the procuring forest land in violation of provisions of Forest (Conservation) Act, 1980 and Environmental Protection Act, 1986 is "substantial question relating environment". The word "substantial question relating to environment" is defined under section 2(m) of the NGT Act, 2010 which is reproduced below:

"substantial question relating to environment shall include an instance where,-

- i) *there is a direct violation of specific statutory environmental obligation by a person by which,-*



- A) *the community at large other than individual or group of individuals is affected or likely to be affected by the environmental consequences; or*
- B) *the gravity of damage to the environment or property is substantial; or*
- C) *The damage to the public health is broadly measurable;*
- ii) *the environmental consequences relate to a specific activity or a point source of pollution;*

Hence, it is submitted that the, applicant has raised the “substantial question of environment”, as the questions raised in the application related to the violation of the provisions of Forest (Conservation) Act, 1980 and Environmental Protection Act, 1986 which being one of the scheduled acts of the NGT Act, 2010 this Hon`ble Tribunal has jurisdiction to decide the same. I say that, the applicant gained knowledge about the illegal procurement by respondent no.11 for the first time after receiving documents i.e. the Certified Copies Mutation Entries of exchanged land on various dates from Respondent No.,7 The Tahsildar, Shrigonda, Dist-Ahmednagar. That the applicant received the said Certified Copies on 29/11/2018, 06/07/2019 and 19/07/2019 and has gained the knowledge of the said illegal exchange of land. Thus, said relief is not barred by limitation.

Rejoinder to para. No. 5 of the reply affidavit.

9a. I say that, the contentions of para 5(a) of the reply not correct and the contentions raised by the applicant in Original Application No. 84 of 2019 are correct supported by the documentary evidence annexed with the application.

9b. I say that, the contentions of para 5(b) of the reply are not correct. It is contended by the respondent number 11 in said para that, the application filed



by the applicant is devoid of merit and filed with an ulterior motive to stall the operations of 26 MW Co-generation plant on false and vexatious grounds. In this context, it is submitted that, there is no reason for applicant to have any ulterior motive against number 11. That, the applicant is law abiding citizen, agriculturist, doctor by profession and member Maharashtra Harit-sena, certificate to that effect is issued by Forest Department. Applicant is keenly interested in protecting the environment in the vicinity. In fact, as per the various reports of MPCB and Forest Department, said 26 MW Co-generation project is located within the Eco Sensitive Zone of the Sanctuary and therefore, it was incumbent on the part of respondent number 11 to have procured all relevant environmental clearances from all the Government Authorities. That, recently, the MPCB has served the show cause notice dated 28/02/2020 on respondent number 11 directing them to pay Rs. 69,90,000/- (Rs. Sixty Nine Lakhs Ninety Thousand only) for continuing with the installation of 26 MW Co-generation plant without obtaining prior environmental clearances. This further clarifies and substantiate the contentions raised by the applicant. *Hereto annexed and marked as Exhibit "P-1" is the copy of said notice dated 28/02/2020 issued by MPCB to respondent no. 11*

9c. I say that, the contentions of para 5(c) of the reply are not true and correct and are misleading. That the respondent number 11 has raised three contentions in the said para which are replied in detail hereunder. Applicant is dealing with the said three issues together. That so far as the first contention, it is submitted that, applicant along with Original Application has annexed all relevant evidences, particularly the visit reports dated 28/05/2019 and 31/7/2019 of the MPCB and the opinion dated 01/04/2019 of the Conservator of Forest (Wildlife), Pune, Maharashtra, that there is a clear violation of



various environmental laws while establishing the 26 MW Co-generation project and exchange of land. That the stand of applicant is further substantiated by the show cause notice dated 28/02/2020 (mentioned supra) for environmental compensation of Rs. 60,90,0000/- on respondent number 11.

So far as second contention, it is submitted that the said contention is totally false and misleading. Firstly, it is a Gut number and not the Survey Number. That the land at Gut number 52/1 is not deforested and still is a forest land. Following dates and events are important to deal with the issue in hand:

Sr. No.	Date	Event
1	03/06/1892	Vide notification published under provisions of Indian Forest Act, 1878, land at Survey Number 99A at village Limpangaon, T-Shrigonda, Dist-Ahmednagar admeasuring 428 acres 5 Gunthas declared as Reserved Forest along with various other lands <i>(Notification annexed at exhibit "B" page nos 33-40 with Original Application)</i>
2	19/09/1935	Vide notification published by the erstwhile Government of Bombay, deforested 40 Acres land out of 428 Acres 5 guntha land of the said Survey Number 99A. Therefore, 388 Acres 5 Gutha land still remained under Reserved Forest. <i>(Annexed at exhibit "C" at page No. 41 of Original application).</i>



3	25/11/1970	Vide notification number FLD-1870/ 67084-W State Government de-reserved 82 Acres land out of remaining 388 Acres land of the said Survey Number 99A of village Limpangaon. Therefore, 306 Acres land still remained Reserved Forest. <i>(Annexed at exhibit "C" at page no. 42 of Original Application and referred by the Respondent No.11 in para under reply)</i>
9	27/09/1970	Vide notification u/s 18(1)(2) of Wildlife Protection Act various lands including the remaining 306 Acres land at Survey No.99A of Village Limpangaon declared to be reserved for the Great Indian Bustard sanctuary.

9d. I say that, from the above, it is clear that, out of 428 Acres and 5 Guntha land situated at old Survey Number 99A, 40 Acres land is deforested on 19/09/1935, while 82 Acres is deforested on 25/11/1970. At present 306 Acres land is still under the "Reserve Forest" category. That the old Survey number 99A is divided into two Gut numbers i.e. 51 and 52/1, 52/2. That the respondent number 11 was sanctioned the 82 Acres land by the Collector, Ahmednagar out of survey number 99A which was deforested and is situated at the Gut number 52/2 and not at 52/1 as contended by the respondent number 11. The applicant says, that even said allotment is illegal and bogus. That, the illegal exchange of land has occurred in Gut number 52/1 out of old Survey Number 99A (on the remaining forest land of 306 Acres) and not on the land deforested vide Notification dated 25/11/1970 as claimed by the respondent number 11. This



fact can be substantiated by relying upon the 7/12 extracts of the exchanged lands situated at Gut number 52/1 (the said 7/12 extracts are annexed with Original Application at exhibit "G" page number 92A to 92AD). It is further submitted that, the opinion of Conservator of Forest (Wildlife), Pune, Maharashtra State, also clearly states that, the forest land is allotted to respondent number 11 by Revenue Department by exchanging it free of cost. It is further submitted that, if the forest land is allotted to the respondent number 11 in the year 1971 and are in possession of the same since 1971 then, there was no occasion for them to mutate the same in the year 2017, which is being done by the respondent number 11. (Mutation entries are annexed with the Original Application at Exhibit "G" page nos. 78A to 78AD)

9e. I say that, in so far as the third contention of the para 5(c) of the reply, it is submitted that the 26 MW Co-generation project of the respondent number 11 was granted "consent to establish" on 18/05/2018. It is now admitted in the reply by the respondent number 11 that, the said project is at a distance of 8.52 kilometres from the Great Indian Bustard Sanctuary. So on the date i.e. 18/05/2018, the 26 MW Co-generation project was within the Eco-Sensitive Zone of the Great Indian Bustard Sanctuary and therefore, was governed by the guidelines dated 09/02/2011 issued by the Ministry of Environment and Forest (Wildlife division), Government of India which mandates the project proponent to seek prior environmental clearance from Standing Committee of National Board for Wildlife before seeking environmental clearance as per EIA Notification, 2006. Even otherwise, as per the EIA notification of 2006, Rule 2, the power plant of more than 25 MW needs prior environmental clearance from the Central Government if, project falls whole or in part within the 10



kilometres from the boundary of the protected area notified under Wildlife Protection Act.

9f. I say that, since the respondent Number 11, on the date of establishment of project, i.e. on 18/05/2018 failed to comply with both the above requirements, cannot now take advantage of the Notification dated 11/02/2020 issued by the Ministry of Environment, Forest and Climate Change, Government of India. It is further submitted that, admittedly the 26 MW Co-generation plant of the respondent number 11 is established without complying with the laws in force at relevant time particularly the environmental legislations, cannot be benefited by retrospectively applying the Notification dated 11/02/2020. It is further submitted that, the Notification dated 11/02/2020 cannot be given "retrospective operation" and the activities which had been categorised as prohibited activities in the EIA notification of 2006 could not be permitted and legalised under a subsequent notification. The respondent number 11 cannot take advantage of his own illegal act and wrong conduct which was in violation of the laws in force at the relevant time.

9g. I say that, the contentions of para 5(d) of the reply are not true and correct. That the applicant has dealt with the said contentions in respect of Notification dated 25/ 11/1970, in the para 9 c-f of the present rejoinder and for the sake of convenience and brevity, the contentions raised by the applicant in para 9 c-f of the present rejoinder may be read as rejoinder to Para 5(d) of the reply of the respondent number 11.

9h. I say that, the contentions of 5(e) of the reply are not true and correct. It is contended by the respondent number 11 that, 82 acres land out of land of old Survey number 99 A is conveyed to respondent number 11 by the Collector, Ahmednagar by an order dated 02/04/1971 for establishing the Sugar Factory.



It is further contended by the respondent number 11 that, the said 82 acres land is deforested by the Notification of the year 1970. It is further contended by the respondent number 11 that, the said 82 acres land is situated at Gut number 52/1 of the Village Limpangaon, Taluka-Shrigonda, District- Ahmednagar. In this context, it is submitted that, perusal of order dated 02/04/1971, passed by the Collector, Ahmednagar shows that, there is no mention of Gut number 52/1 in the said order. There is only mention of Survey number 99A. It is further submitted that, the 82 Acres land which was deforested in the year 1970 is situated at Gat number 52/2 and not on 52/1 as contended by the respondent number 11. That the respondent no.11 has not filed or annexed any document/evidence to substantiate claim in respect of 82 Acres deforested land and the Sugar Factory is situated at land at Gat number 52/1 of the village Limpangaon and respondent number 11 be put to strict proof of the same. It is vehement contention of the applicant in Original Application that, the illegal exchange of the land has occurred on Gut number 52/1, where there is no deforestation. That the respondent no.11 is trying to mislead the Hon'ble Tribunal by making wrong submissions relying upon the Notification dated 25/11/1970 and order of Collector, Ahmednagar dated 02/04/1971 and therefore, may kindly be dealt with strictly.

9i. I say that, the contentions of para 5(f) of the reply are not true and correct. That the applicant has dealt with the said contentions in respect of Notification dated 11/02/2020 of the Ministry of Environment, Forest and Climate Change in para 9 c-f of the present rejoinder and for the sake of convenience and brevity, the contentions raised by the applicant in para 9 c-f of the rejoinder be read as rejoinder to para 5(f) of the reply of the respondent number 11.

9j. I say that, the Contentions of para 5(g) does not need reply.



9k. I say that, the contentions of para 5(h) of the reply are not true and correct. That the applicant has dealt with the said contentions in respect of notification dated 25/11/1970 de-reserving 82 acres Forest Land and the order dated 02/04/1971 passed by the Collector, Ahmednagar, in the para 9 c-f and 7 h of the present rejoinder and therefore, be read as rejoinder to para 5(h) of the reply of the respondent number 11.

9l. I say that, the contentions of para 5(i) of the reply of the respondent number 11 in respect of Notification dated 25/11/1970 are dealt with by the applicant in para 9 c-f of the rejoinder. That the respondent number 11 has further contended in para 5(i) of the reply that the contentions raised by the applicant in para 8 of Original Application in respect of illegal exchange of land at Gut number 52/2 and obtaining huge loan on said land are fictitious and applicant be put to strict proof of the same. In this context, it is submitted that, firstly, the applicant has annexed all the mutation entries of the said exchanged land which clearly shows that the said land have been exchanged with private land in contravention of the provisions of Forest (Conservation), Act 1980 and secondly, applicant has also annexed all the 7/12 extracts of the said land which also shows that the said land is mortgaged with various Co-operative banks for availing loan of more than Rs. 143 Crores. *(the said 7/12 extracts are annexed with Original Application at page 92A to 92AC).*

9m. I say that, the contentions in para 5(j), (k) and (l) of the reply are not true and correct and the applicant has dealt with the said contentions in respect of Notification dated 11/02/2020 of Government of India, in para 9 c-f of the present rejoinder and same may be read here.

9n. I say that, the contentions in para 5(m) and (o) of the reply are not true and correct and applicant has a dealt with the said contentions in respect of



Notification dated 25/11/1970 of Government of Maharashtra, in para9 c-f and (q) of the present rejoinder and samemaybereadhere.

9o. I say that, the contentions of para 5(p) of the reply are not true and correct. Very fact that the project was established within the Eco-Sensitive Zone of the Great Indian Bustard Sanctuary is hazardous to wildlife as the Great Indian Bustard bird is endangered species.

9p. I say that, the conditions of para 5(q) of the reply are not true and correct and the contention in respect of how applicant derived the knowledge about the establishment of 26 MW Co-generation project at Gut number 52/2 is also misleading. Applicant has annexed all the relevant reports and various applications filed under Right to Information Act with various Government Authorities and procured all the information legally.

9p. I say that, the contentions of para 5(r) of the reply are not true and correct and contention in respect of order dated 02/04/1971 passed by the Collector, Ahmednagar is dealt in para9 c-f of the rejoinder and same may be read here.

9r. I say that, the contentions of para 5(s) and 5(t) does not need a reply.

9s. I say that, the contentions of para 5(u) of the reply of respondent no.11 are not true and correct. That the contentions are in respect of public hearing as per the requirements of EIA Notification, 2006. It is submitted that the public hearing is important part of EIA process and the purpose is to bring out opinion of the public regarding proposed project and its implications and is only democratic space for voicing concerns by the public. That the law requires that the Expert Appraisal Committee carry out "detailed scrutiny" of the minutes of the public hearing including written responses received from interested persons. The Expert Appraisal Committee has to give categorical reasons as to



how the objections raised by the public have been taken care by the project. In the case in hand, the written objections of the applicant were not considered and hence applicant can certainly bring this fact before the Hon'ble Tribunal.

9t. I say that, the contentions of para 5(v) of the reply are not true and correct. The contentions are in respect of Notification dated 25/11/1970 and order of Collector, Ahmednagar dated to 02/04/1971. That the applicant has dealt with the said contentions in para 9 c-f and h of the present rejoinder and same may be read here. That the respondent number 11 has further contended in para 5(v) of the reply that applicant has produced nothing on record to show that the land at Gut number 52/1 is reserved forests. In this context, it is submitted that the applicant has annexed at exhibit "F" page 51B the opinion of the then Deputy Conservator of Forest, Ahmednagar wherein, it is clearly mentioned that the remaining 306.5 Acres land at old Survey Number 99A of village Limpangaon, T-Shrigonda, Dist-Ahmednagar is still Reserved Forest and provisions of Forest (Conservation) Act, 1980 are applicable to the said land and Gut No. 52/1 is part of the said old Survey number 99A. Further similar opinion is also given by the Conservator of Forest (wildlife), Pune on 01/04/2019. The said opinion is given on the complaint filed by applicant. The said opinion is annexed at exhibit "U" page 196D.

9u. I say that, the contentions of para 5(w) and (x) are not correct and are misleading. It is contended by the respondent number 11 that, the Co-generation plant is an integrated part of the Sugar Factory of the Respondent Number 11 and since boiler is used for sugar unit, distillery unit, there is no requirement of obtaining EC under EIA Notification, 2006 merely for installing boiler. In this context, it is submitted that as per the EIA Notification, 2006, the power plant of more than 25 MW needs to take prior environmental clearance. Further, as



per the said Notification the project is considered as "A" category project, if it falls whole or in part within distance 10 KM from prohibited area notified under Wildlife Protection Act and prior environmental clearance is necessary and admittedly as the project of the respondent number 11 Falls within 10Kilometres of the Great Indian Bustard Sanctuary, it was necessaryfor them to get prior environment clearance from Central Government. That it is further submitted that that the Co-generation power plant is separate unit and not part of Sugar Factory. That the Maharashtra Pollution Control Board in visit reports also noted that the 26MWCo- generation project is separate unit and has completed almost 65% work.

9v. I say that, the contentions in para 5(y) of the reply does not need any reply.

9w. I say that, the contentions in para 5(z) of the reply are not true and correct. That the Respondent No. 11 in the said para has made a contention in respect of maintainability. That the applicant has dealt with the said contentions in present rejoinder in para 9e and same may be read here. That the contentions in respect ulterior motive of applicant in filing Original Application is also dealt with by applicant in para 9bin present rejoinder.

9x. I say that, the contentions in para 5(bb) of the reply regarding the maintainability of prayers of applicant are not true and correct. That the applicant has raised substantial question related to environment and hence prayers are perfectly maintainable.

10. I say that, the contentions in para 6 and 7 of the reply are denied by applicant for want of knowledge.

11. I say that, from all the above and what is annexed to the Original Application. its clear that respondent authorities have grossly failed in their

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duties. I say that, under these circumstances, the Original Application deserves to be allowed as per the prayers made therein with costs.

PLACE: PUNE

DATE: 24 /09/2020

V Jathar

Applicant

Ratambe

RAHUL A. TAMBE

[Advocate for the Applicant]



:: VERIFICATION ::

I, Vinaykumar Vitthalrao Jathar, Age: 43 years, Occu: Doctor, Agriculturist & Social activist, R/O: Bankar Nagar, Shrigonda, T- Shrigonda, Dist- Ahmednagar, Maharashtra, do hereby solemnly affirm and state on oath that the contents of this rejoinder are read over and explained to me in Marathi by my Advocate, which I believe to be true and correct to the best of my own knowledge and record available with me

Hence verified at Shrigonda on this 24th day of September, 2020.

Explained & identified by:

DEPONENT

Advocate.

R. Tambe

V. Jathar
(Vinaykumar Vitthalrao Jathar)

Adv. Rahul A. Tambe

S.No./B.S.B./N: 371/2020

BEFORE ME

Solemnly affirmed before me by Dr. Vinaykumar Vitthalrao Jathar, R/O Bankar Nagar, A.P. Tal. Shrigonda. who is identified before me by Adv. Rahul A. Tambe, R/O. Shrirampur, Dist. Ahmednagar whom I personally know.

[Signature]
B. S. BHOS
Advocate & Notary Public
(Govt. of India)
Plot No. 9/909, Pant Nagar
Shrigonda, Dist. Ahmednagar
M- 9423756229



24 SEP 2020



MAHARASHTRA POLLUTION CONTROL BOARD
REGIONAL OFFICE, NASHIK

Phone: 0253/2365150
Fax: 0253/2365140
Visit us at www.mpcb.gov.in
E-mail: ronashik@mpcb.gov.in



Regional Office
Udyog Bhavan, First Floor
Trimbak Road, Near ITI, Satpur,
Nashik - 422007

No. MPCB/RO/NASHIK/SCN/512/74/2019

Date: 28/02/2020

To,
M/s. Sahakar Maharishi Shivajirao Narayanrao Nagawade SSK Ltd,
Shrigonda Factory, Tal -
Shrigonda, Dist.-Ahmednagar.

Sub: Show Cause Notice under the Provision of Water (Prevention and Control of Pollution) Act, 1974 & Air (Prevention and Control of Pollution) Act, 1981 for assessing Environmental Compensation.

Ref: 1. Order dtd. 05.12.2019 & 05.02.2020 passed by Hon'ble National Green Tribunal Principal Bench, New Delhi in O.A No- 84/2019 (WZ) (Arising out of W.P No. 11120 of 2019).
2. Direction issued on 19.01.2019 for stoppage of work of 26 MW CO- generation plant.
3. Approval of Head Office for issuing SCN for assessing Environmental Compensation.

WHEREAS, you are operating your industry in Water Pollution Prevention area and Air Pollution Prevention area declared the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 and amendments thereto.

AND WHEREAS, Hon'ble National Green Tribunal Principal Bench, New Delhi in O.A No- 84/2019 passed an order dtd. 05.12.2019 & 05.02.2020.

AND WHEREAS, Board has issued direction for stoppage of work of 26 MW CO-generation plant on 19.01.2019.

AND WHEREAS, as per record and verification from Board official it is notice that even after issuance of direction for stoppage of work, you have continued for installation of your 26 MW Co. gen plant without obtaining Environmental clearance.

AND WHEREAS you have violated the direction issued by the Board, and it is decided to issue letter for Environmental Compensation for violation of the direction.

NOW THEREFORE, you are hereby directed to pay an amount of Rs- 69,90,000/- (Rs- Sixty nine lacks ninety thousand only) Environmental compensation assessed on 'Polluter Pays' principal for violation of direction issued by the Board and carried out the construction activity without obtaining Environmental Clearance as per reforms of National Green Tribunal Order dtd. 28.08.2019 and as your units falls in LSI category. The Environmental compensation has been assessed from the date of issuing direction for stoppage of work ie. 19.01.2019 to the date of obtaining Environmental Clearance ie. 11.09.2019 (Total- 233 days).

True copy

जन माहिती अधिकारी तथा
उप प्रादेशिक अधिकारी
म.प्र.नि. मंडळ, अहमदनगर

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about:blank

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The Environmental compensation of Rs- 89,90,000/- (Rs- Sixty nine lacks ninety thousand only) may kindly be deposited in favor of Regional Officer, Maharashtra Pollution Control Board, Nashik at the earliest.

This is issued as per approval of Hon'ble Member secretary.

For and on behalf of the
Maharashtra Pollution Control Board


(Amar B Durgule)

Regional Officer, Nashik.

Copy submitted for favor of information to:
PSO, MPCB, Mumbai.

Copy to:-

SRO, Ahmednagar - You are directed serve the copy to the Industry, submit the compliance, and take necessary follow up.

True copy



जन माहिती अधिकारी तथा
उप प्रादेशिक अधिकारी
म.प्र.नि. मंडळ, अहमदनगर

J. J. Jathar

TRUE COPY