

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

ORIGINAL APPLICATION NO. 101/2023 (WZ)

Mr. NAGESH VINAYAK DHAMALE ...APPLICANT

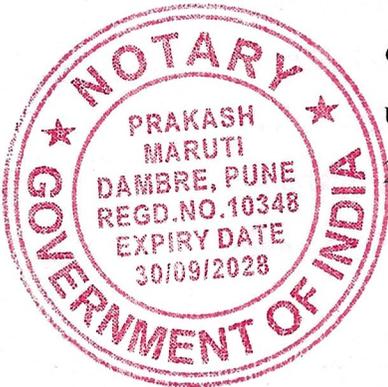
V/s

M.P.C.B. and Ors. ...RESPONDENTS

**REJOINDER AFFIDAVIT ON BEHALF OF THE ORIGINAL APPLICANT**

I, Nagesh Vinayak Dhamale, age: 38 years, R/at: Sr. No. 82/18, Sagar Colony, Shastri Nagar, Kothrud, Pune – 411038, the Original Applicant, state on solemn affirmation as under :

1. The Applicant Submits that, there are various discrepancies in the date of events while granting Consent to Establish. As the first CTE was granted on **12/01/2016** under orange category which was valid upto commissioning of the unit or five years (11/01/2021), whichever is earlier, for Total BUA 25,012.887 Sq.Mtrs. with Capital Investment of the Project Rs. 58.62 Crores. Thereafter **lapsed period of 473 days** there was revalidation of Consent to Establish with expansion for Residential and Commercial Construction Project under Red Category which was further granted on **01/05/2022** under orange category which was valid upto commissioning of the unit or 12/01/2026, whichever is earlier, for Total BUA 29,409.12 Sq.Mtrs. with Capital Investment of the Project Rs.



117.73 Crores. As on 08/08/2023 total construction Completed is BUA 28861.77 Sq.mtrs. out of total BUA 29409.18 Sq.mtrs.

2. The Applicant Submits that, the letter submitted by the Project proponent of dated **01/10/2019** stating mechanical completion certificate elaborating further that “This is to certify that M/s. Thermax Ltd WWS SPG has Successfully completed Supply, Erection of Mechanical, Electrical and Instrumentation System for Sewage Treatment Plant with Capacity 100KLD bearing OC number 320818 Located at M/s. Apex Builders Moshi, Pune. This Plant is ready for Precommissioning and Commissioning activities”. Whereas, **Circular dated 12/07/2022** of MPCB with subject stating provision of penal fees for occupiers violating combine consent regime prescribed under Air / Water Act – Reg. elaborates a point of violation to be considered as penal fees in **point (V)** which states “**to operate the activity without valid consent to operate of the board and applying after lapse of validity period**”. Whereas the penal charges calculation can be in defect to the said provisions of the Circular of MPCB referred above. As the Calculation of Penal Fees to grant was been considered from the date of Part completion certificate i.e. **20/1/2020** for completed BUA 12865.02 Sq.Mtrs.; in such case there was refusal of Consent to Operate for Project Proponent on **29/03/2023** for non-compliance of conditions and same there was issue of Show Cause notice to Project Proponent on the same date **29/03/2023**. Thereafter, Project Proponent have replied to the Show cause notice on **10/06/2023**. And then the Project Proponent have complied with the conditions and perquisites to satisfy the board by fulfilling the Bank Guarantee on **28/09/2023 for Rs.10 Lakh** and **28/09/2023 for Rs. 5 Lakh**.

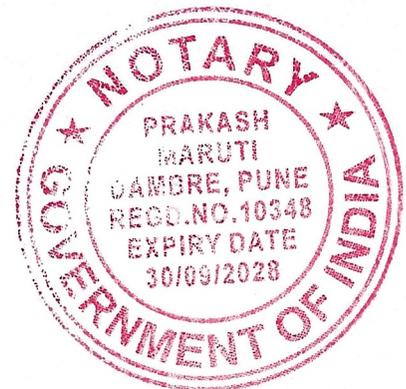


Subsequent to the Project Proponent paid the **Penal Fees of Rs. 11,27,712/- on 04/08/2023** and on such compliance the Project Proponent was granted with Consent to Operate.

3. The Applicant submits that, according to above events of Project Proponent there is defect and error in calculation of penal fees.

Sr. No.	Particulars	Date
1.	Installation and commencing of STP	01/10/2019
2.	Part Completion Certificate	20/01/2020
3.	Application to Consent to Operate	08/11/2022
4.	Refusal of Consent to Operate	29/03/2023
5.	Show Cause Notice to Project Proponent	29/03/2023
6.	Reply to Show Cause Notice by Project Proponent	10/06/2023
7.	Penal Fees Paid by Project Proponent	04/08/2023
8.	Granted Consent to Operate (Part -I)	08/08/2023
9.	Bank Guarantee submitted by Project Proponent to MPCB	28/09/2023

As per the **Circular dated 12/07/2022** of MPCB with subject stating provision of penal fees for occupiers violating combine consent regime prescribed under Air / Water Act – Reg. elaborates a point of violation to be considered as penal fees in **point (V)** which states “**to operate the activity without valid consent to operate of the board and applying after lapse of validity period**”.





Days shall be calculated as of from 01/10/2019 date of installation and commissioning of STP till 29/03/2023 date of refusal and show cause notice for non-compliance of conditions and violation of law which equals to 1275 days with exemption of Covid period deduction from 1/4/2020 to 31/3/2021 i.e. 365 days, sum up to total days **910 days i.e. 2.493150684931507 years** for the penal charges to be levied from the Project Proponent and accordingly

**Penal Fees Calculation is as below:**

Red Category = 5 times of one term consent fee X No. of years of Violation  
 = 5 X 125000 X 2.493150684931507  
 = **15,58,219.178082192/-**

This Calculation is as per the **Circular dated 12/07/2022** MPCB which states in it vide point (V) **“to operate the activity without valid consent to operate of the board and applying after lapse of validity period”**.

4. The Applicant Submits that, the above calculation are as per procedural part to charge penal fees for non-compliance and violation of procedure to have valid Consent to Operate but in this violation of laws of Environment Damage compensation must be considered in this circumstances as there is negligence for due process of law and taking it granted by paying of Penal fees to the concern authority on procedural part to validate their violations affecting the laws of Environment.
5. The Applicant Submits that, Penal fees are accordance to the Procedural part to grant Consent but on other Part, MPCB does not calculate the Environment Damage compensation for such

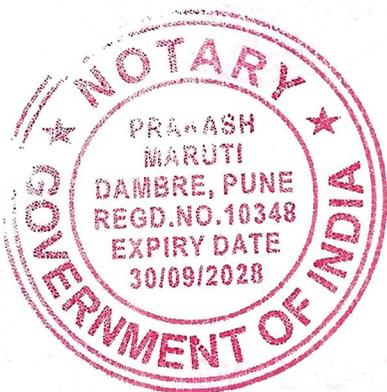


lapse period of violation time. Consent is the validation to the installation and commissioning of machinery as precautionary and requisite law that allows and grants accordingly with the terms and conditions given the Environment laws. Therefore in such lapse period the violation of laws of Environment must be considered as damage to the environment as there is no such sanction, verification or validations to such installation and commissioning of machinery the treat the environment on legal grounds which can ensure that no harm or violations of laws cannot be considered.

6. The Respondent No. 5, has committed a serious offense though having full knowledge and consequences for such negligence ; the Respondent No. 5, has continued to commit the offence regularly and further through its actions has showed disrespect and has insulted the appropriate government authorities. From the actions of the Respondent No. 5, it can be seen that the Respondent No. 5, is not following the principles of Sustainable Development, therefore, it is right to say that the Respondent No. 5 is a Habitual Environment Polluter.
7. The Applicant submits that, not only penal fees shall be enhanced but the principle of polluter pays must be applied and Environment Damage compensation shall be ascertained in such circumstances.

THEREFORE, IT IS MOST HUMBLY PRAYED THAT: -

1. Hon'ble NGT may kindly consider the lapse period to calculate the Environment Damage compensation in such circumstances.



- 2. Hon'ble NGT may kindly consider the calculation of Penal Fees accordingly with Circular of 12/07/2022 of MPCB.
- 3. Any other order may kindly be passed in interest of Justice and safeguard of Environment and its laws.

Whatever stated above is true and correct to the best of my knowledge, belief and information. Hence, to verify the same I have signed hereunder at Pune.

Date: 09/10/2023

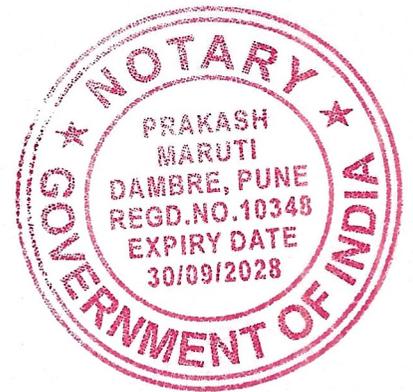


Affiant

Nagesh Vinayak Dhamale

NOTED AND REGISTERED AT  
SERIAL NUMBER 123/2023

09 . OCT 2023



**BEFORE ME**



**PRAKASH M. DAMBRE  
NOTARY, GOVT. OF INDIA  
PUNE**