

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
EXECUTION APPLICATION NO. 6 OF 2023
IN
ORIGINAL APPLICATION NO. 117 OF 2017**

In the matter of:

Dileep B. Nevatia

.....

Applicant

VERSUS

**The Motor Vehicle Department
& Others**

.....

Respondents

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APPLICANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI

DATED: 13.2.2024

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APPLICANT'S REJOINDER TO THE REPLY DATED 28.7.2023 OF
RESPONDENT NO. 1

The Applicant above named, begs to state as follows:

1. The Applicant states that he has read the copy of the Affidavit-in-Reply dated 28.7.2023 filed by the Respondent No. 1 in this Hon'ble Tribunal and in rejoinder thereto states as follows.
2. At the outset, the Applicant denies each and every statement, allegation, averment and contention made by Respondent No.1 in its Affidavit-in-reply parawise ad-seriatim which is contrary to or inconsistent with what is stated by the Applicant in the aforesaid O.A. No. 117 of 2017, E.A. No. 6 of 2023 and various applications filed therein and put the true and correct facts before this Hon'ble Tribunal. The Applicant prays that nothing should be deemed to be admitted by the Applicant by virtue of not having been specifically denied herein. The Applicant craves leave to file further Affidavit, if required.
3. At the further outset I say that by final Order dated 25.6.2020 passed in O.A. No. 117 of 2017, this Hon'ble Tribunal was pleased to direct the Respondents to comply with ten (10)



directions so as to ensure proper check and control of vehicular pollution in the State of Maharashtra. Needless to state, vehicular pollution is by far the biggest source of air pollution in the State, which goes to over 75% of the total air pollution in cities like Mumbai, Pune, etc. Admittedly, the Affidavit in Reply filed by Respondent No.1 makes no mention whatsoever of any of the ten conditions being complied by the Respondents, but instead states something else towards alleged compliance, which is no compliance at all, as more particularly set out hereunder.

4. By Clause No. 1, the Respondents were directed:

“To ensure strict compliance of Rule 115 sub Rule (7) of the Central Motor Vehicle Rules, 1989 stipulating that **only vehicles that carry valid “PUC: Certificate issued by authorised agency are permitted to ply in the State of Maharashtra so as to prevent air pollution due to vehicles that do not have PUC certificate.”**

5. That in its Reply at para (5), the Respondent No. 1 has instead claimed that:-

“In compliance with the clause 16 (1) of the Order dated 25.06.2020 passed by the Hon’ble Tribunal I say and submit that the regular checking of PUC certificates as per provisions of law is conducted by the flying squads of the Regional / Deputy Regional Transport Offices. I say and submit that the action under section 115 read with 190 (2) of the Motor Vehicles Act is initiated against the

defaulters, so as to prevent air pollution due to motor vehicles. **Further if Owner / Driver of the Motor Vehicle failed to produce a PUC certificate at the time of checking or within 7 days from the issuance of the checking report the action under Section 115 read with Section 177 of the Motor vehicles Act, 1988 is initiated against the Owner/driver of the Vehicle.**

6. That had the vehicular PUC data is actually made available on the Central server, the particulars of the polluting vehicle could be immediately verified by the authority. The admitted fact that the Owner / Driver of the Motor Vehicle is required to produce a PUC certificate at the time of checking or within 7 days from the issuance of the checking report, clearly goes to show that the PUC data is not linked to the Central Server and testing is continuing manually as before.
7. That in its Reply at para (5), the Respondent No. 1 has further given a statement giving the year wise particulars of vehicles checked, vehicles detected and fine recovered. This goes to show that around a quarter of vehicles that are checked are violating the PUC requirement, namely:-

Year	Vehicles checked	Nos. of Polluting Vehicles	% of Polluting Vehicles
2020-21	2,08,851	54,290	26.0%
2021-22	2,25,988	54,961	24.3%
2022-23	2,90,423	73,345	25.25%



8. That as confirmed in the Reply, even after the vehicles are found to be PUC non-compliant, they are only fined and are permitted to move around, which is clearly a non-compliance of Clause (1), which states that **“only vehicles that carry valid “PUC: Certificate issued by authorised agency are permitted to ply in the State of Maharashtra so as to prevent air pollution due to vehicles that do not have PUC certificate.”**
9. That as documented by the Maharashtra government’s Economic Survey 2022, as of January 2022, there were around 4.09 crore vehicles in Maharashtra of which close to 42.13 lacs vehicles were in Mumbai itself. The random checking of around 2.5 lac vehicles annually is only around 0.6 % of the vehicles population. Even this small sample reveals a startling fact that around 25% of total vehicles or over 100 lacs vehicles are PUC non-complaint and these are freely moving around the State and the very few that are caught are let off with a mere fine.
10. **Thus the Reply of Respondent No.1 clearly shows that direction/Clause No.1 is not at all been complied with by the Respondents.**
11. By Clause No. 2, the Respondents were directed:
- “To record the PUC data only so to automatically linked with the Central Server with uniform standardise software.”**
12. Thus, it was mandatory that PUC data, as recorded, is directly linked with the Central Server, so as to have at the finger tip



the PUC information of all the complying/non-complying vehicles in the State of Maharashtra.

13. That in its Reply at para (6), the Respondent No. 1 has instead claimed that:-

“I say and submit that the said provision is in force in the State of Maharashtra w.e.f 01.04.2019, **to give effect to the provisions the Transport Commissioner office has issued Circular dated 20.03.2019.** A copy of the Circular dated 20.03.2019 issued by the Transport Commissioner office is hereby annexed and marked as Exhibit-1.”

14. **That mere issuing a Circular, does not confirm that direction/Clause No. 1 is complied with by the Respondents. The statement made in para (5) of the Reply that the Owner / Driver of the Motor Vehicle is required to produce a PUC certificate at the time of checking or within 7 days from the issuance of the checking report, clearly goes to show that the PUC data is not linked to the Central Server. Thus the Reply of Respondent No.1 clearly shows that direction/Clause No.2 is also not been complied with by the Respondents.**

15. That by Clause No. 3, the Respondents were directed:

“To introduce annual third party inspection of PUC centres.”

16. That by Clause No. 4, the Respondents were further directed:

“To limit the number of PUC centres upgrade them under strong supervision and quality control.”

17. That in its Reply at para (7), the Respondent No. 1 has instead claimed that:-

“In compliance with the clause 16 (3) and (4) of the Order dated 25.06.2020 passed by the Hon’ble Tribunal, I say and submit that the Transport Commissioner’s office has issued SOP for the PUC centre which is implemented from Sep, 2022. A copy of the said SOP is hereby annexed and marked as Exhibit-2. **I say and submit that in clause 11 of the said SOP the provision of surprise inspection at least once a year is made to ensure proper working of the Centre. I say and submit that the Transport Commissioner’s office has issued a circular to all Regional / Deputy Regional Transport officers to conduct surprise inspection of PUC Centres on 13.07.2023.** A copy of the said circular dated 13.07.2023 is hereby annexed and marked as Exhibit-3. In the said circular it is instructed to all Regional / Deputy Regional Transport Officers to conduct special checking of PUC centre in the State of Maharashtra for the period 17.07.2023 to 07.08.2023.”

18. **That the Reply evidently shows that Clause No. 3 for annual third party inspection of PUC centres, which in the**

first place was inserted to prevent arbitrariness and corruption, is not at all implemented and the Respondent No. 1 and its officers are themselves carrying out the checks, which is in clear violation of the said clause. Moreover, the requirement to limit the number of PUC centres upgrade them under strong supervision and quality control is also not complied with. Thus the Reply of Respondent No.1 clearly shows that directions/Clause Nos. 3 and 4 are also not been complied with by the Respondents.

19. That by Clause No. 5, the Respondents were directed:

“To ensure 100% compliance by linking annual vehicle insurance and vehicle registration with PUC certificate.”

20. That in its Reply at para (8), the Respondent No. 1 has instead claimed that:-

“In compliance with the clause 16 (5) of the Order dated 25.06.2020 passed by the Hon’ble Tribunal I say and submit that **noting of Insurance is done automatically on the Vahan System. I say and submit that the issue of **updating the vehicle details related to the insurance of new vehicles as well as renewal of the insurance policy of old vehicles on VAHAN 4.0 system is being handled by the Insurance Information Bureau of India (IIB).**”**

21. That though Clause 5 requires 100% compliance by linking annual vehicle insurance and vehicle registration with PUC certificate, the Reply is completely silent on this aspect, but only states about "Insurance", without even a word on "PUC Certificate". **Thus, the Reply of Respondent No. 1 clearly reveals that there has been non-compliance of Clause 5 and the linking annual vehicle insurance and vehicle registration with PUC certificate is not at all complied with.**

22. That by Clause No. 6, the Respondents were directed:

"To adopt uniform and standardised data recording and reporting format and uniform software and introduce automatic online network for transmission of PUC data to the Central Server and to allow proper analysis of data for remote auditing of PUC centres."

23. That in its Reply at para (9), the Respondent No. 1 has claimed that:-

"In compliance with the clause 16 (6) of the Order dated 25.06.2020 passed by the Hon'ble Tribunal, **I say and submit that as per amended provisions of Rule 115(2) of the Central Motor Vehicles Rules, 1989 emission result during testing of vehicles are updated electronically on Central Vahan data-based."**

24. That the Reply of Respondent No.1 is clearly a deliberate attempt to mislead this Hon'ble Tribunal inasmuch as **Rule**

115(2) of the Central Motor Vehicles Rules, 1989 specifies the emission standards at the manufacturing stage of the vehicle i.e. before the vehicle is delivered from the vehicle manufacturers' factories and before its registration. On the other hand Rule 115(7) of the Central Motor Vehicles Rules, 1989 come into operation after the expiry of a period of one year from the date on which the motor vehicle is first registered and every such vehicle shall carry a valid "Pollution under control" certificate issued by an agency authorised for this purpose by the State Government.

25. That the Respondent No.1 being the Transport Department of the Government of Maharashtra, is well aware of the provisions of Rule 115(2) and Rule 115(7) of the Central Motor Vehicles Rules and that the testing of vehicles under Rule 115(2) is not the same as PUC tests under Rule 115(7). **However, in order to deliberately mislead this Hon'ble Tribunal a statement is made that in compliance of Clause 6 in respect of "transmission of PUC data to the Central Server and to allow proper analysis of data for remote auditing of PUC centres", provisions of Rule 115(2) are complied with. Needless to say, the Respondents have no role to play in testing of vehicles under Rule 115(2).**

26. That by Clause No. 7, the Respondents were directed:

"To strengthen inspection of PUC centres for quality control and strengthen the licensing programme to ensure proper calibration authentic test, annual maintenance contract for the maintenance of all testing equipment

and accessories training of operators, calibration of equipment etc. are carried out.”

27. That by Clause No. 8, the Respondents were further directed:

“To make quality audit of centres and calibration quarterly.”

28. That in its Reply at para (10), the Respondent No. 1 has maintained complete silence on actions taken to strengthen inspection of PUC centres for quality control and strengthen the licensing programme. Moreover, the Reply is also silent on aspect of quarterly quality audit of centres and calibration, due to very reasons that these Clauses (7) and (8) are also not complied with.

29. That by Clause No. 9 the Respondents were directed:

“To upgrade testing centres for high level of automatic emission testing so that operators and vehicles drivers are prevented from manipulation of results.”

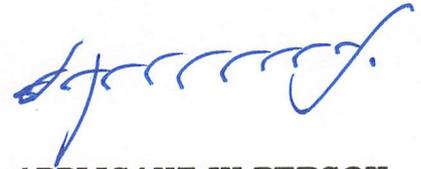
30. That by Clause No. 10 the Respondents were further directed:

“To introduce well equipped mobile test centres and a programme to check visibly polluting vehicles.”

31. That in its Reply at para (11), the Respondent No. 1 has once again maintained complete silence on actions taken to upgrade testing centres for high level of automatic emission testing. Moreover, the Reply is also silent on introduction of well equipped mobile test centres and

programme to check visibly polluting vehicles, due to very reasons that even these Clauses (9) and (10) are also not complied with.

32. That from the aforesaid Reply of Respondent No.1, it is indisputably clear that it is not an Affidavit of compliance, but is an Affidavit of non-compliance of the Order dated 25.6.2020 passed by this Hon'ble Tribunal in O.A. No. 117 of 2017.
33. In the circumstances, the Applicant submits that the reliefs as prayed for in the Execution Application be granted and the same be made absolute with costs.



APPLICANT IN PERSON

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Respondents

AFFIDAVIT

I. Dileep Nevatia, S/o Balkrishna Nevatia, aged about 74 years, residing at Shashi Deep, 5-A, Worli Sea Face, Mumbai 400 030 do hereby solemnly affirm and state as under:

1. That I am the Applicant in the present Application and am conversant with the facts and circumstances of the present case and as such I am competent to swear this affidavit.
2. That I have read the accompanying Rejoinder affidavit in the foregoing paras and understood the contents thereof. The facts stated therein are true and correct to my knowledge, which I believe to be true.

[Signature]

APPLICANT

VERIFICATION

Verified at Mumbai on 13th day of February, 2024 that the contents made in the above affidavit are true and correct and nothing material has been concealed therefrom.

[Signature]

DEPONENT



Seen the Driving Licence
No. MH01 - 20090127799
DOI - 6.9.1967



[Signature]
R. R. MISHRA

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