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Date 17/3/2025



IN THE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, PUNE

EXECUTION APPLICATION NO. 7 OF 2024
IN
ORIGINAL APPLICATION NO. 28 OF 2014

BETWEEN

CA MR. SAIPRASAD MANGESH APPLICANT - APPLICANT

VERSES


THE REGIONAL TRANSPORT OFFICER & ORS -RESPONDENTS

REJOINDER AFFIDAVIT BY THE APPLICANT

MOST RESPECTFULLY SHOWETH:-

The Applicant respectfully submits this rejoinder and reply to counter the misleading and evasive contentions raised by the various Respondents. It is evident that the Respondents, in collusion with government authorities, have deliberately misrepresented facts before this Hon'ble Tribunal to shield their vested interests. The information placed on record by the Respondents is incomplete, misleading, and intended to suppress material facts, thereby obstructing the course of justice. The Applicant has consistently highlighted the bias and inaction of the concerned authorities, which is evident from the contradictory and selective disclosures made in their submissions. The Additional Affidavit is filed to bring to the Hon'ble Tribunal's attention the continued misrepresentation and the necessity of considering the true facts of the case. In light of the gravity of the issues involved, the Applicant prays for a thorough inquiry into the collusion and deliberate suppression of facts by the Respondents, ensuring a fair and just adjudication in the interest of environmental protection and public welfare.

BEFORE ME


LETTER FILED BY DAPOLI AGRICULTURAL UNIVERSITY IN
COMPLIANCE WITH THE DIRECTIONS OF THE HON'BLE
NATIONAL GREEN TRIBUNAL

SANDESH A. RANE
B.A.LL.B.
ADVOCATE & NOTARY

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Tal: Sawantwadi, Dist: Sindhadurg

1. **Failure to Comply with NGT Directives:-** That the Hon'ble National Green Tribunal (hereinafter referred to as "Hon'ble Tribunal") had expressly directed Dapoli Agricultural University (hereinafter referred to as "the University") to submit an affidavit on or before the scheduled hearing dated 24/02/2025. However, the University has failed to file the requisite



affidavit in compliance with the said direction and has instead submitted a letter. Such an act of non-compliance demonstrates a willful disregard for the binding judicial mandate of the Hon'ble Tribunal. The submission of a mere letter, as opposed to a legally sworn affidavit, is an apparent attempt to evade accountability and obfuscate the deficiencies in compliance, thereby undermining the sanctity of the orders passed by this Hon'ble Tribunal.

2. **Failure to Discharge Statutory and Supervisory Responsibilities:-** It is further submitted that the University, being a government institution entrusted with statutory responsibilities, was obligated to ensure adherence to the directions of the Hon'ble Tribunal, particularly with respect to afforestation and ecological restoration at Survey No. 189C. However, despite being the designated authority for scientific guidance and supervision over plantation activities, the University has demonstrably failed to exercise due diligence. The absence of proactive measures, coupled with its inaction, has led to a situation where the afforestation program has been reduced to a mere formality rather than a scientifically sound and ecologically beneficial endeavor.

3. **Collusion with Implementing Agencies:-** The conduct of the University indicates a prima facie collusion with Respondent No. 4 and other implementing agencies responsible for executing the Tribunal's directives. The University has neither provided a comprehensive implementation plan nor exercised its supervisory mandate to ensure compliance with the afforestation requirements. This dereliction raises concerns regarding the credibility of the entire execution process, especially when considered in the broader context of similar afforestation obligations across other Border Check Posts (BCPs) established under the Concession Agreement. If such non-compliance is evident in matters directly under the scrutiny of the Hon'ble Tribunal, it raises a legitimate apprehension regarding the execution of afforestation measures at other BCP locations, where no active judicial oversight has been exercised.

4. **Mismanagement of Funds and Haphazard Execution of Plantation Activities:-** It is a matter of record that Respondent No. 4, Maharashtra State Road Development Corporation (MSRDC), had duly deposited an amount of ₹10 lakh, and further, both MSRDC and the subcontractor of the Engineering, Procurement, and Construction (EPC) Contractor had made additional financial disbursements in four installments of ₹25,000 each. Additionally, necessary logistical and travel-related expenses were arranged through the said subcontractor to facilitate implementation. Despite these financial provisions, the plantation activities were executed in an



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unscientific and arbitrary manner, deviating significantly from the prescribed methodologies and established ecological principles. The manner in which the afforestation efforts have been carried out has not only rendered the initiative ineffective but has also resulted in the wastage of public funds allocated for ecological restoration.

5. **Failure to Conduct Proper Supervision and Scientific Plantation:-** The University, which was required to conduct systematic and continuous monitoring of the afforestation project, has only undertaken sporadic site visits on four occasions. Such infrequent inspections fall grossly short of the required standard of monthly monitoring essential for ensuring compliance and proper oversight. Moreover, the selection of plant species, particularly bamboo and lemongrass, has been wrongly projected as part of the reforestation effort. These species, in no manner, meet the criteria for tree plantations as mandated under afforestation norms. The glaring inadequacy of the University's approach is further substantiated by the fact that, despite the passage of eleven years, only approximately 8,000 trees remain at the site, which is an abysmal deviation from the mandated afforestation targets.
6. **Failure of the Forest Department and Persistent Non-Compliance:-** It is pertinent to highlight that in 2019, the responsibility for afforestation was transferred to the Upavan Savrakshak, Forest Department, Sawantwadi, with a clear mandate for completion by 2020. However, despite this transfer, the afforestation efforts have remained ineffective, with the Forest Department also failing to ensure implementation. The gross negligence and lack of accountability over the past four years have further compounded the failures in achieving the ecological restoration objectives envisioned by the Hon'ble Tribunal.

ADDITIONAL AFFIDAVIT SUBMITTED BY RESPONDENT NO. 4 (MSRDC) ON 24/02/2025.

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Deliberate Suppression and Misrepresentation by Respondent No. 4 (MSRDC):- The Applicant submits that the affidavit filed by Respondent No. 4 (MSRDC) dated 24/02/2025 is a calculated and deliberate attempt to mislead this Hon'ble Tribunal by suppressing and concealing material facts. It is evident that Respondent No. 4 has intentionally omitted the Panchnama executed by the Forest Department on 13/07/2022, which formed the basis for Dapoli Agricultural University's clearance for the completion of plantation activities as per its letter dated 28/08/2022, issued in compliance with the Hon'ble Tribunal's directions. This omission is not an inadvertent oversight but a deliberate act of obfuscation designed to distort the true

factual position before this Hon'ble Tribunal. The said Panchnama was a crucial document relied upon by Dapoli Agricultural University to certify compliance with afforestation obligations, which subsequently served as the foundation for the issuance of the Commercial Operations Date (COD) certificate by MSRDC to MBCPNL in collusion with the Independent Consultant, Brig. Kapil. The willful non-disclosure of this vital evidence constitutes material suppression and misrepresentation, amounting to an obstruction of justice and warranting an adverse inference under Section 114(g) of the Indian Evidence Act, 1872. Such selective omission of facts and documents to mislead this Hon'ble Tribunal reflects a blatant disregard for due process and transparency, raising serious concerns about the credibility of Respondent No. 4's submissions. In view of this deliberate misrepresentation, the Applicant prays that this Hon'ble Tribunal reject the affidavit filed by Respondent No. 4 and initiate appropriate legal and penal action, including an independent inquiry into the collusion between MSRDC, MBCPNL, and the Independent Consultant in granting the COD in violation of environmental compliance obligations.

8. **Material Suppression of Evidence and Adverse Inference Against Respondent No. 4 (MSRDC):-** The deliberate exclusion of the Panchnama dated 13/07/2022 from the affidavit filed by Respondent No. 4 (MSRDC) on 24/02/2025 constitutes a grave instance of material suppression of evidence, amounting to a calculated attempt to mislead this Hon'ble Tribunal. Such suppression is not merely an act of omission but borders on perjury, as it involves the conscious concealment of a document that is directly relevant to the adjudication of the present matter. It is a well-established principle of law that the suppression of material evidence vitiates the entire claim of the party engaging in such conduct, thereby warranting an adverse inference under Section 114(g) of the Indian Evidence Act, 1872. The Applicant, therefore, respectfully prays that this Hon'ble Tribunal take cognizance of this deliberate misrepresentation and omission, and accordingly draw an adverse inference against Respondent No. 4 for its mala fide conduct in suppressing crucial evidence essential to the fair and just adjudication of the present case.

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- Shifting of Responsibility and Concealment of Deliberate Non-Compliance by Respondent No. 4 (MSRDC):-** Respondent No. 4 (MSRDC) has deliberately sought to shift responsibility onto MBCPNL by asserting that a communication regarding plantation obligations was sent on 02/04/2024. However, this claim is patently misleading, as the Commercial Operations Date (COD) was issued on 20/09/2022, and yet, the first purported communication regarding plantation obligations only emerged nearly two years later, on 02/04/2024, conspicuously after the Applicant



had already initiated the present execution petition. This unexplained and unjustifiable delay, coupled with the fact that the Applicant had made numerous written representations, telephonic appeals, and direct requests to officials, including Mr. Muktesh Wadkar, Executive Engineer, MSRDC, which were blatantly ignored, unequivocally demonstrates a complete dereliction of duty by Respondent No. 4. Such inaction further raises serious concerns regarding the veracity of Respondent No. 4's claims and its attempts to manipulate the record by introducing selective and belated communications to evade accountability. Furthermore, the glaring absence of any formal communication regarding plantation compliance for nearly two years suggests collusion between Respondent No. 4 and the Independent Consultant, aimed at shielding MBCPNL from its obligations and facilitating environmentally detrimental activities in violation of statutory and contractual mandates. It is pertinent to note that, as per the Hon'ble NGT's directives, the plantation was required to be completed before 13/03/2020. However, Respondent No. 4 has deliberately omitted any reference to the Panchnama dated 13/07/2022 in its affidavit, despite the fact that this document was the very basis upon which COD was granted. This constitutes a clear case of selective disclosure intended to mislead the Hon'ble Tribunal and obtain a favorable order through collusion with implementing, executive, and supervisory bodies, all of whom have acted in concert to benefit the concessionaire, MBCPNL, which is now Adani-owned. Such misrepresentation and suppression of material facts warrant immediate intervention and an independent inquiry into the process by which COD was granted, as it stands in flagrant violation of the concession agreement and environmental compliance requirements.

10. Violation of Environmental Laws and Wilful Disregard for NGT

Directives by Respondent No. 4 (MSRDC):- The actions of Respondent No. 4 (MSRDC) constitute a blatant violation of environmental laws and a deliberate disregard for the explicit directives of this Hon'ble Tribunal. The Environmental Clearance, along with the concession agreement, imposes stringent obligations upon MSRDC to ensure afforestation as a fundamental component of environmental mitigation. However, Respondent No. 4's prolonged inaction for over two years, followed by an attempt to fabricate a misleading narrative through belated communications in 2024, clearly reflects a calculated effort to evade legal responsibility and mislead this Hon'ble Tribunal. Such conduct not only undermines the sanctity of judicial and regulatory oversight but also perpetuates irreversible environmental harm under the guise of compliance. Moreover, the established principles of environmental jurisprudence—particularly the "Polluter Pays" principle, as enshrined under Article 21 of the Constitution and reinforced in landmark judicial precedents, mandate that any entity



BEFORE ME

(Signature)

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(Signature)

responsible for environmental degradation must bear the costs of rectification. Additionally, the Precautionary Principle requires proactive measures to prevent environmental damage rather than remedial actions post-facto, a duty that Respondent No. 4 has demonstrably failed to uphold. By neglecting its legal and environmental obligations, MSRDC has not only breached statutory mandates but has also facilitated unchecked violations by the concessionaire, warranting strict scrutiny and necessary punitive measures to ensure accountability.

11. Attempts to Shift Liability and Suppression of Crucial Evidence by Respondent No. 4 (MSRDC):-

Respondent No. 4's recent attempts to shift its burden onto Dapoli Agricultural University, despite its own blatant non-compliance, further erode the credibility of its submissions before this Hon'ble Tribunal. Instead of fulfilling its legally mandated responsibilities, MSRDC has sought to deflect accountability onto an external entity, despite the clear statutory and contractual obligations placed upon it under the Environmental Clearance and the Concession Agreement. Such evasive tactics not only expose the mala fide intentions of Respondent No. 4 but also highlight a systemic effort to obscure material violation. Furthermore, the complete absence of affidavits from Dapoli Agricultural University, Maharashtra Pollution Control Board (MPCB), Central Pollution Control Board (CPCB), or even MSRDC itself raises grave concerns regarding the authenticity of any potential future submissions. This strategic omission strongly indicates a calculated effort to manipulate the proceedings and mislead this Hon'ble Tribunal. The Applicant specifically draws attention to the documentary evidence contained on pages 63, 64, 105, and 360 of the Execution Application, which irrefutably establishes the multiple violations committed by the respondents. The suppression of these crucial records and the shifting of liability serve as further proof of the orchestrated misrepresentation by Respondent No. 4, necessitating strict judicial scrutiny and corrective measures.

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12. Contrived Communications by Respondent No. 4 to Misrepresent Compliance:-

The sudden surge in communications and notices from Respondent No. 4, conspicuously initiated only after the Applicant filed the present application before this Hon'ble Tribunal, is nothing more than a calculated facade intended to create an illusion of due diligence. The timing of these belated correspondences, which were conspicuously absent during the critical period of non-compliance, unequivocally demonstrates that they are not genuine efforts at regulatory adherence but rather a reactionary measure aimed at fabricating a defense after the environmental violations had already been committed and exposed. Such afterthought communications issued post facto in an attempt to mask deliberate inaction



and regulatory breaches, serve no legitimate legal purpose and are intended solely to mislead this Hon'ble Tribunal. The issuance of notices at this stage does not absolve Respondent No. 4 of its prior dereliction of duty, nor does it remedy the blatant violations already committed. These contrived efforts must, therefore, be dismissed outright as a disingenuous attempt to obscure the truth and evade accountability for the flagrant breach of environmental and contractual obligations.

13. **Prayer for Independent Inquiry, Penalties, and Contempt Proceedings:-** In view of the foregoing, the Applicant respectfully prays that this Hon'ble Tribunal take cognizance of the misleading and incomplete affidavit submitted by Respondent No. 4 and direct an independent inquiry into the roles of both MSRDC and the Independent Consultant in the issuance of the COD under conditions of blatant non-compliance. The deliberate suppression of material facts, coupled with the post facto fabrication of compliance efforts, warrants a thorough investigation to ascertain the extent of collusion and regulatory breaches. The Applicant further prays for the imposition of stringent penalties under Section 26 of the National Green Tribunal Act, 2010, and for the initiation of contempt proceedings against Respondent No. 4 for its deliberate attempt to mislead this Hon'ble Tribunal and evade legal accountability. Additionally, it is prayed that MSRDC be directed to immediately deposit a penalty amount commensurate with the cost of afforestation and environmental restoration, as determined by an expert body appointed by this Hon'ble Tribunal. In the interest of justice, it is also prayed that the belated communications of 2024, issued solely as a defensive measure post-litigation, be declared inadmissible as genuine efforts toward compliance, thereby preventing any further misrepresentation before this Hon'ble Tribunal.

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14. **Prayer for Due Consideration of Applicant's Affidavit and Rectification of Oversight:-** The Applicant respectfully submits that the affidavit filed by the Applicant has not been duly considered in the Tribunal's order dated 24/02/2024, resulting in an unjust and incomplete appreciation of the facts. The order appears to rely solely on the affidavit submitted by Respondent No. 4, which, in itself, comprises selective data intended to mislead this Hon'ble Tribunal and secure a favorable order through suppression of material facts. The failure to take into account the Applicant's affidavit has led to a one-sided assessment, undermining the principles of natural justice. In light of this, the Applicant prays for a rectification of this oversight to ensure that justice is rendered in a fair and comprehensive manner. It is imperative that the Tribunal considers the entirety of the factual matrix, including the Applicant's submissions, to

516 prevent Respondent No. 4 from escaping accountability through deliberate misrepresentation.

15. **Misuse of Supreme Court Order by Respondent No. 4 Through Selective Disclosure:-** The Applicant respectfully brings to the attention of this Hon'ble Tribunal that Respondent No. 4 is attempting to take undue advantage of the Supreme Court's order dated 28/01/2015 in SLP No. 10806 of 2014 to justify the deletion of certain paragraphs. However, Respondent No. 4 has deliberately failed to submit the undertaking it provided while filing the said Special Leave Petition, thereby misrepresenting the true context of the Supreme Court's decision, selectively presenting only portions of the order and suppressing critical facts, Respondent No. 4 is engaging in a calculated effort to mislead Hon'ble Tribunal and secure a favorable outcome based on incomplete and distorted information. Such an act of concealment and misrepresentation amounts to a gross abuse of process, warranting strict scrutiny by Hon'ble Tribunal to ensure that Respondent No. 4 does not derive an unfair advantage through selective disclosure while evading its obligations arising from the Supreme Court proceedings.

16. **PRAYER :-** In light of the foregoing, the Applicant most humbly prays that this Hon'ble Tribunal be pleased to:-

A. **Direction for Comprehensive and Truthful Affidavit:** Direct Respondent No. 4 to submit a complete and truthful affidavit, incorporating all material facts, specifically addressing:

- a. The suppression of the Panchnama executed by the Forest Department, which served as the basis for clearance granted by Dapoli Agricultural University;
- b. The unjustified delay of nearly two years in issuing any communication regarding afforestation obligations after the grant of Commercial Operations Date (COD); and
- c. The collusion between Respondent No. 4 and the Independent Consultant in issuing COD to MBCPNL without ensuring compliance with mandatory environmental conditions.

B. **Consideration of Crucial Documentary Evidence:** Direct this Hon'ble Tribunal to duly consider the communication issued by Dapoli Agricultural University while evaluating the affidavits submitted by Respondent No. 4 and other parties, as this document forms critical evidence regarding the clearance granted for plantation activities.

C. **Evaluation of Applicant's Submissions in the Interest of Natural Justice:** Ensure that all written submissions, representations, and documentary evidence submitted by the Applicant, including records

BEFORE ME

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on pages 63, 64, 105, and 360 of the Execution Application, are duly considered and given appropriate weight in adjudicating the present matter to uphold the principles of fairness and transparency.

- D. Strict Action Against Misleading and Incomplete Submissions:** Take strict cognizance of the misleading, incomplete, and selective submissions made by Respondent No. 4, and initiate appropriate legal and penal action for the deliberate suppression of material facts, including but not limited to invoking Section 26 of the National Green Tribunal Act, 2010, and considering the initiation of contempt proceedings for the deliberate misrepresentation before this Hon'ble Tribunal.
- E. Investigation into Non-Compliance and Misuse of Supreme Court Orders:** Recognize that Respondent No. 4 has attempted to take undue advantage of the Supreme Court's order dated 28/01/2015 in SLP No. 10806 of 2014 by selectively deleting certain paragraphs while failing to submit its undertaking made before the Supreme Court. Direct an inquiry into such misrepresentation and deliberate suppression of crucial facts.
- F. Accountability for University's Non-Compliance:** Take cognizance of the willful and persistent non-compliance of the University with the orders of this Hon'ble Tribunal, particularly its failure to submit an affidavit and its evasive conduct in merely filing a letter instead. Consequently, the Hon'ble Tribunal may:-
- Issue appropriate directions to ensure strict compliance with its afforestation directives;
 - Initiate action against responsible officials for continued non-compliance and dereliction of duty; and
 - Direct an independent audit and scientific assessment of the afforestation activities undertaken to identify lapses and recommend corrective measures.
- G. Deposit of Environmental Compensation and Declaration of Non-Admissibility of Belated Communications:** Direct MSRDC to deposit an environmental compensation amount equivalent to the cost of afforestation and environmental restoration, as determined by an expert body appointed by this Hon'ble Tribunal, and declare that the belated communications of 2024 issued by Respondent No. 4 lack credibility and do not constitute genuine compliance efforts.
- H. Issuance of Any Further Orders as Deemed Fit:** Pass any other order(s) as may be deemed just and necessary to uphold environmental justice, equity, and the rule of law, ensuring rigorous compliance with the concession agreement and statutory environmental mandates.

BEFORE ME

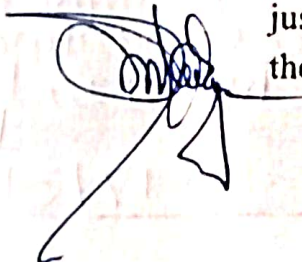


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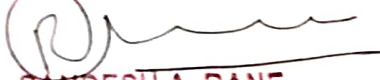
The Applicant reiterates that the deliberate misrepresentations, suppression of material facts, and continued non-compliance by Respondent No. 4 and other concerned parties have resulted in severe environmental violations. It is imperative that this Hon'ble Tribunal intervenes effectively to ensure strict adherence to environmental norms, prevent any further manipulation of legal proceedings, and impose stringent accountability on those responsible. The Applicant, therefore, humbly prays for such relief as this Hon'ble Tribunal may deem just and proper in the interest of upholding environmental justice and the rule of law.

I, Mr. Saiprasad Mangesh Kalyankar, Chartered Accountant, Age 61 years, Indian Inhabitant and active environmentalist residing at House No.1442B at village Banda, Taluka Sawantwadi, District Sindhudurg, State Maharashtra, Pin 416511 state on the solemn affirmation that all information provided in above reply is true and correct to the best of my knowledge and belief. I am signing this affidavit today on 17/03/2025 at Pune/ Sawantwadi.

Date: 17/03/2025

Place: Pune/ Sawantwadi.

BEFORE ME

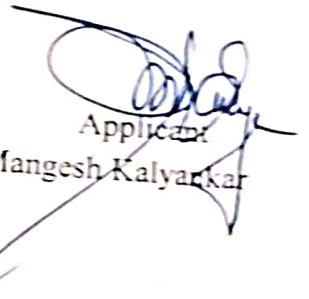


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Applicant
CA Saiprasad Mangesh Kalyankar

VERIFICATION

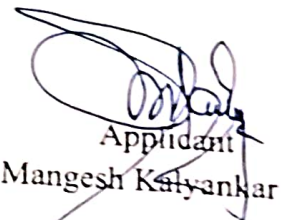
I, Mr. Saiprasad Mangesh APPLICANT, Chartered Accountant, Age 61 years, Indian Inhabitant and active environmentalist residing at House No.1442B at village Banda, Taluka Sawantwadi, District Sindhudurg, State Maharashtra, Pin 416511 state on the solemn affirmation that all information provided in above reply is true and correct to the best of my knowledge and belief. I am signing this affidavit today on 17/03/2025 at Pune/ Sawantwadi.

Date: 17/03/2025

Place: Pune/ Sawantwadi,

Identified by
→ S. Kalyankar

Ishwari S. Kalyankar.
At post banda, Vafoli road
Ishwar house. No. 1442
Pin - 416511

Applicant
CA Saiprasad Mangesh Kalyankar

This document has been personally presented & signed by Saiprasad Mangesh Kalyankar R/o. Banda, Tal. Sawantwadi who is identified by Ishwari S. Kalyankar to whom I personally know No. of pages. 10 Notary Regd. No.7.... Dated...17/3/2025