

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH, PUNE

M.A. No. 11 / 2024

IN

ORIGINAL APPLICATION NO. 139 / 2024

Alpesh Desai

... Applicant

v.

State of Gujarat &Ors.

... Respondents

REJOINDER BY THE APPLICANT TO THE TWO REPLIES FILED BY
DFCCIL

I, Alpesh Desai, the applicant in the present case do hereby state as under –

1. I have filed a detailed submission dated 10th October, 2024 in the present case which may kindly be considered.
2. The DFCCIL have filed two replies dated 11th November, 2024 and 20th January, 2025. I am filing this common rejoinder to both the replies filed by them.
3. As per Sec. 2(a) of the Environment Protection Act, 1986, environment means – *"environment" includes water, air and land and the inter-*

Alpesh Desai



relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property ; ”. Environment Protection Act is a scheduled Act to the NGT Act.

4. As per Sec. 2(m) of the NGT Act, 2010, "substantial question relating to environment" shall include an instance where —

(i) there is a direct violation of a specific statutory environmental obligation by a person by which —

(A) the community at large other than an 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 public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;

5. By reading together of the above two provisions, it is clear that in the present case, due to activities of the DFCCIL, substantial damage to plants, environment and property has occurred and substantial question relating to environment has arose and therefore this Hon'ble Tribunal



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has jurisdiction to entertain the present issue. **Damage to environment has also been reported by the District Collector in their report dated 24th April, 2024 at page 160.**

6. Under Schedule II of the NGT Act, [Sec. 15(4) and Sec. 17(1)] clause J, compensation or relief or damage may be claimed on account of any harm, damage or destruction, to flora including aquatic flora, crops, vegetables, trees and orchards can be claimed. Therefore, it is well within the jurisdiction of this Hon'ble Tribunal to award Environment Damage Compensation to the applicant, payable by the DFCCIL.

Rejoinder to the first reply by the DFCCIL –

7. The DFCCIL in their first reply in para 7 have stated that the claim of the applicant is a private which cannot be resulted due to any action taken under any of the enactments specified in Schedule I. Therefore the claim of the applicants is not maintainable and this Hon'ble Tribunal doesn't has the jurisdiction to decide private civil dispute not resulting from any of the enactments specified in Schedule I of the NGT Act.

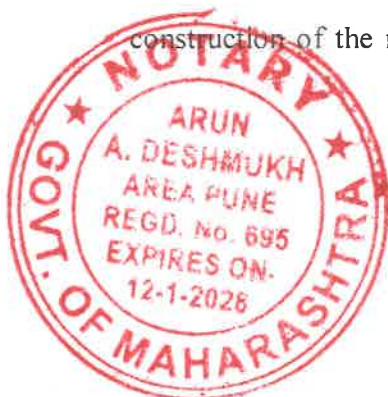
In response, it is submitted that as stated above, the conjoint reading of Sec. 2(a) of the Environment Protection Act, 1986 alongwith Sec. 2(m) of the NGT Act, 2010 and clause J of the Schedule II of the



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NGT Act, demonstrates that claim of the applicants is maintainable, the claim has arose due to the actions of the DFCCIL and this Hon'ble Tribunal has jurisdiction to entertain and allow the claim of the Applicant.

8. In response to para 8 of their first reply, it is stated that the Applicant has paid court fees of Rs. 75,864/- through Demand Draft. The same is recorded in order dated 14th November, 2024.
9. In response to paras 9-12 of their first reply, explanation is already provided above and reproduced here to avoid repetition.
10. In response to para 13 of their first reply it is stated that they are wrongly referring to appellate provision under Sec. 16 of the NGT Act. The present application has to be treated under Sec. 14 and 15 and not Sec. 16.
11. In response to para 14 of their first reply, it is stated, without admitting anything, although there is no direct damage to the trees of the applicant due to construction activity of the railway, the damage is a direct consequence due to diversion of the water stream, which is also undertaken by the DFCCIL alongwith construction of railway line. It is not the case of the applicant that the damage is caused due to construction of the railway line. Applicant is alleging that damage to



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the trees has been caused due to unauthorised diversion of the water stream which is causing water logging in the orchard of the applicant which has resulted in the damage to the trees.

12. Admittedly, the Deputy Executive Engineer, Damangana Canal Division, Padri, Narmada Water Resources Department (NWRD), Govt. of Gujarat though their RTI reply dated 25-09-2024 has clearly stated that **the DFCCIL has not obtained their permission for the diversion of the Balakhadi creek.** NWRD RTI reply dated 25-09-2024 is annexed as Annexure 15 to the submissions made by the Applicant at **page 325-327.**

13. In para 15 and 16 of their first reply they have stated that the applicants have claimed damages for the period from 2019 when the work of laying down of the railway line started in the year 2021.

In response to this it is submitted that the Applicant has produced a letter dated **4th July, 2019 at page 273,** addressed by the District Collector to the DFCCIL. The said letter was based on the complaint of the Applicant and therefore it is submitted that the DFCCIL is misguiding the Hon'ble Tribunal that the work started in 2021. The DFCCIL started levelling of the land in the year 2019 and raised the level of the land by 9 mtrs and afterwards, in the year 2021



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they started laying the railway line. Water diversion and accumulation problem started due to raising the level of the land and not due to laying down the railway line.

14. In response to para 17 to 19 of their first reply, it is stated that the present dispute involves substantial question of environment as stated above and therefore the present Tribunal has jurisdiction to entertain and allow the claim of the applicant. Applicant has paid the requisite court fees of Rs. 75,864/-.

15. In response to para no. 20 it is stated that the land of the applicant wasn't facing any water logging issues before the laying down of the DFCCIL railway line. Water accumulation has started only after the diversion of the water stream which was done by the DFCCIL. Water accumulation has nothing to do with heavy rains. The DFCCIL has been misguiding the Hon'ble Tribunal by blaming water accumulation on rains. As stated above, the NWRD has stated that they have not given any permission for it's diversion.

Rejoinder to the second reply by the DFCCIL –

16. In response to para 2 of their second reply it stated, without admitting anything, although there is no direct damage to the trees of the applicant due to construction activity of the railway, the damage is a



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direct consequence due to diversion of the water stream, which is also undertaken by the DFCCIL alongwith construction of railway line. It is not the case of the applicant that the damage is caused due to construction of the railway line. Applicant is alleging that damage to the trees has been caused due to unauthorised diversion of the water stream which is causing water logging in the orchard of the applicant which has resulted in the damage to the trees.

17. In response to para 3 of their second reply it is stated that the DFCCIL is quoting from the report in piecemeal. They are referring to only those observations which are favourable to them. The report has also observed the following –

- a. Land of the applicant is the Survey No. 1993 & 1984, opposite to the Railway line pole No. 222/7 to 222/13, Balakhadi of Pardi Taluka.
- b. The catchment area Rainwater of Pardi Taluka passes through Balakhadi and meets the Kotharkhadi and then into the sea.
- c. **The Rainwater previously was passing adjacent to the land of the applicant, and through the land owned by Railways and was meeting the Balakhadi near to the Railway line and thus rainwater was getting discharged in natural way.**



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- d. The DFCCIL have made a service road which has blocked the natural rain through which the rainwater was getting discharged. The said land filling has resulted into a small bund, due to which water changed its course and it started flooding the applicant's land as well as other adjoining fields.
- e. Balakhadi has been shown in the village map of year 1884 that is prior to Railway.
- f. DFCCIL has not diverted the flow of the Rainwater stream to Balakhadi in a proper way and therefore the water is getting diverted towards the adjoining area which includes the applicant's land.
- g. The new diversion is not doing proper discharge through the natural drains.
- h. As the rainwater is passing through the applicant's field and is accumulating over there, it will cause further soil erosion. Already 1 to 2 feet of land has already eroded.

The report at page 160 clearly states that environment has been damaged.

18. Moreover, the DFCCIL has not carried out the remedial measures as suggested by the Committee and the Applicant is facing the flooding issue every year. Neither Applicant nor the Joint Committee has



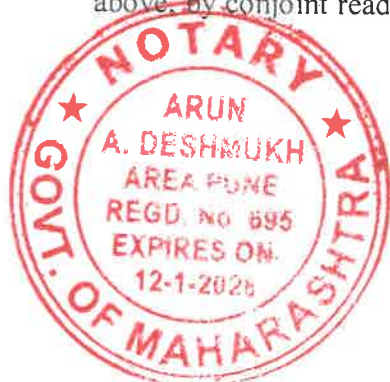
A. Deshmukh

referred to the land of the applicant as forest land. The DFCCIL is trying to misguide the Hon'ble Tribunal.

19. The Deputy Director of Horticulture Dist. Valsad also carried out site inspection on 9th May, 2023. The said report was submitted by them to the Resident Additional District Collector, Valsad. The Sub Divisional Officer, Pardi, Tehsildar-Pardi, Executive Engineer, Irrigation Dept., the Regional Officer, GPCB Vapi and the applicants were present during the site inspection. Observations of the site inspection reports are as follows –

- a) Earlier between the land of the applicant and the railway line there used to be a natural *kotar* through which rain water used to pass and meet the Balakhadi.
- b) **Railways closed the said *kotar* by doing land filling and made a service road due to which the water changed its course and got diverted towards the applicants Orchard field and started flooding it.**
- c) **Due to water logging soil erosion is taking place and damage to chikoo and Mango trees were getting damaged.**
- d) Water was not found to be polluted.

20. In response to para 4 of their second reply it is stated, that as explained above, by conjoint reading of the provisions of Environment Protection



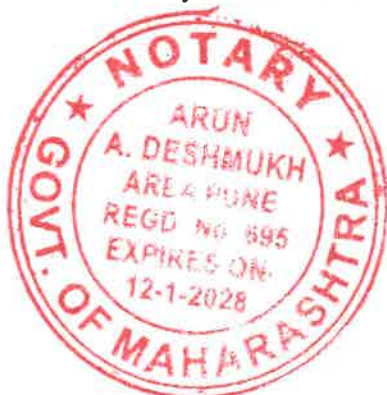
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Act and NGT Act, environmental degradation has taken place. The same has been recorded by the Collector in their report. The NWRD have also stated that they have not granted permission for diversion of the water stream and such unauthorised diversion and closure has resulted in damage to environment. The ratio laid down in M C Mehta v. Kamal Nath is squarely applicable to the present case.

21. In response to the para 7 of their reply it is submitted, without admitting, even if solatium is not applicable, damage to trees and land erosion has happened due to water logging, for which the DFCCIL is liable to pay compensation.

22. In response to para 8 of their second reply, it is submitted that as alleged by the DFCCIL, no tree cutting was done by the Applicant, it was tree pruning. Tree pruning after periodic interval has to be done and is done by all fruit orchard owners. Tree pruning is done for rejuvenation of the trees and for their healthy growth. Applicant has not cut any trees to his own detriment, as the fruits from the trees was a source of income for the applicant.

Further in the same para, the DFCCIL is wrongly attributing survey number 1984 to the applicant. Whereas, survey number of the



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applicants land is 1993. Survey number 1984 belongs to the cousin of the Applicant.

23. The Applicant had demanded the original plan of storm water drain and shifting of Balakhadi Creek as in 2018 i.e. before starting of the work and the same was not given to him. The applicant made RTI Appeal on 24-10-2024. The DFCCIL on 24/09/2024 replied and provided the plan. As per this plan, it looks like that the shifting of Balakhadi Creek was originally not there, the service road was to be constructed near our boundary. Letter dated 24-09-2024 is annexed as **Annexure 1**.

24. The Applicant would like to state further that water gets accumulated in the railway line. To drain out the said water, the DFCCIL has laid down unauthorised pipe line and the said water is getting discharged into the orchard of the applicant. Image showing unauthorized pipe line is annexed as **Annexure 2**.

VERIFICATION

I, Alpesh Desai, the Applicant in the present case do hereby verify and declare that the statements made in the aforesaid paras are true and correct to the best of my knowledge and information and I believe the same to be true and that no material has been concealed therefrom.

**NOTED AND REGISTERED
AT SERIAL NUMBER 6251/2025**

Place – Pune

Date 22-01-2025

Alpesh Desai



BEFORE ME

A. A. Deshmukh
22/01/2025
A. A. DESHMUKH
NOTARY STATE OF MAHARASHTRA
PUNE
REG. NO. 695

Alpesh Desai

Alpesh Desai

Applicant





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MUMBAI NORTH

No: - MUM/N/RTI/407

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भारत सरकार (रेलमंत्रालय) का उपक्रम

Dedicated Freight Corridor Corporation of India Ltd.

A Govt. of India (Ministry of Railway) Enterprise

By Speed post

Date 24/09/2024

To,
Shri Bharathbhai Narnji Desai ,
Dipli Faliya , Village - Umarsadi
Tq Pardi, Dist Valsad
Gujart - 396125

Sub: - Providing of Information under the provision of the RTI Act 2005. Case of Shri Bharathbhai Narnji Desai , Dipli Faliya , Village - Umarsadi Tq Pardi, Dist Valsad Gujart - 396125

Ref: - RTI Second appeal under section 19 93) submitted on 30.10.2023, registered vide file No CIC/DFCCIL/A/2023/143598 at your office dated 11.09.2024

Vide above referred letters, the applicant has sought the information as stated in column 1. The reply to be given regarding the information sought is as per the Column2.

Sr. No	Information sought	Reply to be given
1	The plan originally submitted as approved by DFCCI before commencement of the freight corridor western region work	The plans as valid on 14.07.2019 are as follows 1) 12/AL/DG/1329/CD REV-1 approved on 04.06.2018 2) 12/AL/DG/1328/CD REV-1 approved on 04.06.2018

copy - approved plan .

(R.M. Barge)

DPM/Fin/APIO

Mumbai (North),DFCCIL

Corporate Office: 5th Floor, Pragati Maidan Metro Station Complex, New Delhi – 110

001. Tele : 011-23454700, Fax no. 011 – 23454701, Web :- dfccil.org.

Registered Office : Room No. 101A Rail Bhawan, Raisina Road, New Delhi – 110001.

CIN No: U60232DL2006GOI155068

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