

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
ORIGINAL APPLICATION NO: 15 OF 2020

IN THE MATTER OF:

KRISHNA MARATHE

.....APPLICANT

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENTS

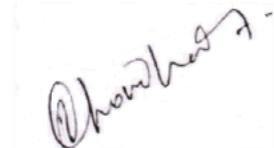
INDEX

S. NO.	PARTICULARS	PAGE NO.
1	REJOINDER ON BEHALF OF THE APPLICANT TO THE REPLY FILED BY RESPONDENT NO.1 ON 14.09.2023	467-476
	Proof of Service	477

THROUGH



RITWICK DUTTA



**RAHUL CHOUDHARY
ADVOCATE**

Counsel for the Applicant

N-73, Lower Ground Floor, Greater Kailash-1

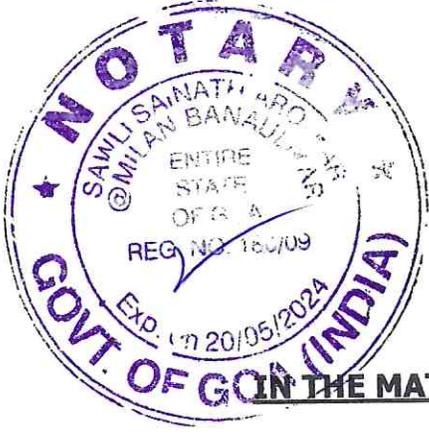
New Delhi- 110048

Email:- dclaw160@gmail.com

Place:- Pune/Delhi

Dated:- 19.04.2024

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
ORIGINAL APPLICATION NO: 15 OF 2020



IN THE MATTER OF:

KRISHNA MARATHE

.....APPLICANT

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENTS

REJOINDER ON BEHALF OF THE APPLICANT TO THE REPLY FILED BY
RESPONDENT NO.1 ON 14.09.2023

MOST RESPECTFULLY SHOWETH:

1. The above-titled application was filed under Sections 14 and 15 of the National Green Tribunal Act, 2010 raising substantial issues relating to the operation of mining activities without obtaining Environmental Clearance under the EIA Notification, 2006 by Respondent No.6 M/s New India Mining Company ('NIMCO') for mining of Iron Ore in mining lease area in respect of 32.83 Ha in village of Redi, District Sindhudur, State of Maharashtra.
2. The Applicant has *inter alia* raised issues regarding mechanized open cast mining of iron ore being carried out by Respondent M/s NIMCO without any prior Environmental Clearance, improper disposal and stacking of topsoil and mining reject at earmarked sites as well as pollution to the groundwater reserves of Redi Village and Arabian Sea.
3. That on 20.04.2023, Respondent No.1, Ministry of Environment, Forest and Climate Change (MoEF & CC) contended that only 13 activities were exempted from prior EC and the present mining activities does not fall under the exemption. The Hon'ble Tribunal has directed Respondent No.1 to file an affidavit stating the same. The relevant portion of the order dated 20.04.2023 is reproduced below:

[Handwritten Signature]

2. From the side of Respondent No.1/Ministry of Environment, Forest & Climate Change (MoEF&CC), learned Counsel Mr. D. M. Gupte has appeared, who was earlier directed by us to apprise us as to whether EC was required in the present case or not, to which he has responded after consulting the Officers that as per the Notification dated 28.03.2020 issued by the MoEF&CC, there are only 13 activities enumerated there-in such as clay and sand to be extracted manually, which are exempted from prior EC but rest of the activities require obtaining of the prior EC, Page 2 of 3 because of that reason, he says that in the present case, prior EC would be required. We direct him to file an affidavit to that effect within a period of seven days.

4. That on 14.09.2023, Respondent No. 1 filed the Affidavit submitting that Respondent No. 6 New India Mining Corporation Pvt. Ltd (NIMCO) at Redi village is required to have Environmental Clearance as per the EIA Notification, 2006 and its subsequent amendments.
5. That the present rejoinder is being filed in response to the reply filed by Respondent No.1 on 14.09.2023. The MoEF admitted to the fact that the project proponent is required to have prior Environmental Clearance. However, failed to consider the following aspects:
 - a. That the Reply affidavit dated 14.09.2023 states in Para 4 that the project proponent *is required to have Environmental Clearance as per the EIA Notification, 2006 and its subsequent amendments*. However, the MoEF has solely applied the 2006 EIA Notification, whereas the mining activities were in operation without Environmental Clearance even during the application of 1994 EIA Notification. Therefore the violations of the operation of mines will be as per the 1994 and 2006 Notification.
 - b. That it is also submitted that the MoEF in its reply affidavit dated 14.09.2023, failed to compute the Environmental compensation to be levied by the project proponent for continuing to undertake the mining activities without

14/09/23

Environmental Clearance despite renewal in 2001. Therefore all the activities undertaken by Respondent No.6 since 2001 till the time mine was in operation was in violation of EIA Notification 1994 and 2006.



THE OPERATION OF MINING ACTIVITIES WITHOUT OBTAINING ENVIRONMENTAL CLEARANCE IS IN VIOLATION OF EIA NOTIFICATION, 1994 AND 2006

6. That in response to the contention stated in Para 4 that EC is required as per the EIA Notification, 2006 and its subsequent amendments, the Applicant submits that though the MoEF applied the EIA Notification, 2006, the mining activities were in operation even during the EIA Notification, 1994 operating without valid environment clearance, therefore in violation of the provisions of the 1994 Notification as well.
7. That EIA Notification, 1994 also specifically states in Schedule-I *list of projects requiring Environmental Clearance from the Central Government*, clause (20) states *mining project (major minerals) with leases more than 5 hectares*. It is submitted that the present mining operations undertaken are iron ore mining, which is a major mineral. Therefore, the project proponent is also required to undertake environmental clearance as per the EIA Notification, 1994.
8. That the Respondent No.6 in Para 22 of the Counter Affidavit stated that the mining leases were renewed in the year 2001. The project proponent did not apply for an EC therefore could not have operated. However, the project proponent continued to undertake mining operations even after renewal without obtaining EC. Therefore, all the activities undertaken by Respondent No. 6 since 2001 is in violation to the 1994 and the 2006 Notification.
9. That in ***M.C Mehta v. Union of India (2004) 12 SCC 118***, (Annexure A-15 @Pg 283) the Hon'ble Supreme Court has clarified the

Minerals

position of mining activities which came up for renewal after the EIA Notification, 1994. It held as follows:

"We are unable to accept that the contention that the notification dated 27th January, 1994 would not apply to the leases which come up for consideration for renewal after issue of the notification. The Notification mandates that the mining operations shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years. In none of the leases the requirement of notification was complied with either at the stage of initial grant of the mining lease or at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification.



10. That further the Hon'ble Supreme Court in *Common Cause v. Union of India (2017) 9 SCC 499* has held that renewal of mining lease will require EC. It states as follows:

"188. To avoid any misunderstanding, confusion or ambiguity, we make the following very clear:

(1) A mining project that has commenced prior to 27-1-1994 and has obtained a no-objection certificate from SPCB prior to that date is permitted to continue its mining operations without obtaining an EC from the Impact Assessment Agency. However, this is subject to an expansion (including an increase in the lease area) or modernization activity after 27-01-1994.....

(2) The renewal of a mining lease after 27-01-1994 will require and EC even if there is no expansion or modernization activity or any increase in the pollution load.

11. That the mining operations were operating without valid environmental clearance even after the renewal of mining leases in the year 2001. It is therefore clear that the project proponent was required to obtain EC as per the EIA Notification 1994 and 2006. Furthermore, in Para 4 and Para 6 of the Reply affidavit filed by Respondent No.7. SEIAA (@Pg 382) it was clarified. The relevant portion of the reply affidavit is reproduced below:

4. MoEF notified the first EIA Notification on 27.01.1994. According to the said notification, prior Environment Clearance was required for mining projects

.....

Handwritten signature

6. It seems that NIMCO has started mining operations in the year 1952. After the EIA Notification 1994, came to be notified. NIMCO should have applied for prior Environment clearance, it seems, which they have not. They haven't even applied for Environment Clearance after EIA Notification, 2006 got notified. This is serious violation of EIA Notification 1994 and 2006

12. That therefore, it is clear that operation of mining activities without obtaining Environmental clearance is in violation of EIA Notification, 1994 and 2006 and also in violation to the Hon'ble Supreme Court order in **Common Cause v. Union of India (2017) 9 SCC 499** and **M.C Mehta v. Union of India (2004) 12 SCC 118**

THE IMPOSITION OF ENVIRONMENTAL COMPENSATION HAS TO BE AS PER THE CPCB FORMULA

13. That the CPCB has published a formula/ methodology for Assessing Environmental Compensation as per the directions issued by the Hon'ble National Green Tribunal in **Parayavaran Suraksha Samiti & Anr v. Union of India & Ors., O.A No. 593 of 2017**. The formula derived for the calculation of the Environmental Compensation is as follows:

$$EC = PI * N * R * S * LF$$

Where,

EC is Environmental Compensation in ₹
 PI = Pollution Index of industrial sector
 N = Number of days of violation took place
 R = A factor in Rupees (₹) for EC
 S = Factor for scale of operation
 LF = Location factor

14. That the 'N' depicts the number of days of violations took place. It is submitted that 'N' does not prescribe limitations in days or years for imposing environmental compensation on violators while applying the methodology. In the case at hand, the mining lease was renewed in the year 2001 for a period of 20 years. As per the EIA Notification, 1994 the project was required to have Environmental Clearance, even if the Respondent No. 6 has not obtained clearance from 1994 to 2006, it could have not operated the mines without obtaining EC when the lease was renewed. Therefore, all the activities undertaken by the

Handwritten signature

Respondent no.6 since 2001 was in violation to EIA Notification, 1994 and 2006. It is further submitted that the violations are still continuing as it was not scientifically closed. Therefore, number of days of violations has to be calculated since 2001 till the time illegally mined areas are restored.

15. That the deliberate environmental violations and the implications of operating a mine for a decade without obtaining prior environmental clearance are ignorance of the mining laws and therefore liable to pay environmental compensation as held in ***Alembic Pharmaceuticals Ltd v. Rohit Prajapati (2020) 17 SCC 157***. The Hon'ble SC observed three industries were operating without obtaining environmental clearance and held as follows:

"39. In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such non-compliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by the NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at - 10 crores each. The amount shall be deposited with GPCB and it shall be duly utilized for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate. Though we have come to the conclusion, for the reasons indicated, that the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued under Article 142 of the Constitution. Alembic Pharmaceuticals

Direct



Limited, United Phosphorous Limited and Unique Chemicals Limited shall deposit the amount of compensation with GPCB within a period of four months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by the NGT."

(Emphasis supplied)

16. That the imposition of environmental compensation has to be as per the formula derived by the CPCB in the Hon'ble Supreme Court's order in *Paryavaran Suraksha Samiti v. Union of India, 2019 SCC OnLine NGT 2834*. Further, it is submitted that the formula developed by CPCB does not mention any limitation in terms of the period of calculation of environmental compensation.
17. That it is also submitted that this Hon'ble Tribunal in many cases has imposed environmental compensation considering the past violations. In ***Indian Council for Enviro- Leal action v. Jammu and Kashmir State Pollution Control Board, 2018 SCC OnLine NGT 393*** (Annexure A23, @Pg403) imposed environment compensation of Rs.5Crore to SIDCO and Municipal Council, Samba for the violations undertaking for over 10 years. Furthermore, in ***Sudhansu Sekhar Kunar v. State of Odisha, 2021 SCC OnLine NGT 1893*** (Annexure A22 @Pg 399) the Hon'ble Tribunal applied the CPCB formula for illegal mining activities undertaken for 7300 days i.e. 20 years. Therefore, in the case at hand number of days of violations has to be calculated since 2001 till the time illegally mined areas are restored.
18. That it is humbly submitted that in view of the contentions mentioned above, the Hon'ble Tribunal may be pleased to direct the MoEF to compute the environmental compensation and impose the same on Respondent No.6 for illegally operating mines without obtaining prior environmental clearance and in violation to EIA Notification 1994 and 2006.



[Handwritten signature]

19. Pass any orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case

Marathe

APPLICANT

THROUGH



[Signature]

RITWICK DUTTA

[Signature]

RAHUL CHOUNDHARY

ADVOCATES

COUNSEL FOR THE APPLICANT

N-73, LOWER GROUND FLOOR, GREATER KAILASH-I,
Email:dclaw160@gmail.com

Place: Bicholim.

Date: 17/04/2024

VERIFICATION

Verified by Krishna Purushottam Marathe aged about 50, R/o H.No 1204, Redi Kanyal, Tal-vengurla, Sindhudurg, 416517 do hereby verify that the contents of Paragraph 1 to 19 are true to my knowledge and nothing material has been concealed therefrom.

Acclhas cond U68091616565

EXECUTED BEFORE ME

I do hereby attest the above signature of
Sri/Smt. *krishna purushettan Marathe, Rb Sindhudurg, Maharashtra*
who is identified by *Acclhas cond*
Produced *Acclhas cond*
whom I personally know

[Signature]

Saw. S. Arulkar
alias Milan Banaultkar
B.A.L.L.B

ADVOCATE & NOTARY PUBLIC

for entire STATE OF GOA
office No. 5, Laxmi Parvati Arcade
Nr. Canara Bank, Bicholim, Goa
M: 7798687857/9860026790

Office of the Notary at Bicholim Goa
this day of *17/4/2024*
Notary Stamp Rs *30*

8/3/2024

Marathe

APPLICANT



BEFORE THE NATIONAL GREEN TRIBUNAL**WESTERN ZONAL BENCH AT PUNE****ORIGINAL APPLICATION NO: 15 OF 2020****IN THE MATTER OF:**

KRISHNA MARATHE

.....APPLICANT

VERSUS

UNION OF INDIA & ORS.

.....RESPONDENTS

AFFIDAVIT

I Krishna Purushottam Marathe aged about 50, R/o H.No 1204, Redi Kanyal, Tal-vengurla, Sindhudurg, 416517 do hereby solemnly affirm and declare as under:

1. That I am the Applicant in the above titled Application and I am Conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying rejoinder are true and correct and nothing material has been concealed therefrom.

7 *Marathe*

DEPONENT

Aadhar card 468091618585

VERIFICATION

Verified on this ____ day of ____ 2024 that the contents of the above-mentioned Affidavit are true and correct and nothing material has been concealed therefrom.

7 *Marathe*

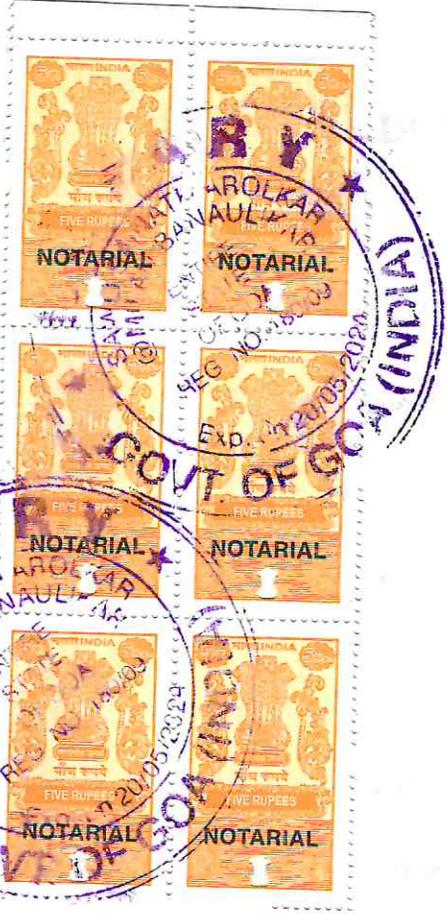
DEPONENT

Solemnly Affirmed and Signed
BEFORE ME

by the above named Executant/Deponent
Shri/Smt. Krishna Pusalkar
Mahesh R. Sirdhokar
Mahesh R.
Who is identified before me by
Shri/Smt. Preductee Araker car
whom I personally know.
Office of the Notary at Bicholim Goa.
on this 17/11/2024 day of Nov 2024.
Notarial Stamp Rs. 300 Reg No. 814/2024



Sawl S. Arulka
alias Milan Banaultkar
B.A.L.L.B
ADVOCATE & NOTARY PUBLIC
for entire STATE OF GOA
office No. 5, Laxmi Parvati Arcade
Nr. Canara Bank, Bicholim Goa
M: 7799697857/9860026790





477

DC Law Chambers <dclaw160@gmail.com>

Copy of Rejoinder on behalf of the Applicant in OA No. 15 of 2020/WZ Krishna Marathe Vs. Union of India & Ors.

1 message

DC Law Chambers <dclaw160@gmail.com>

Fri, Apr 19, 2024 at 12:35 PM

To: Manasi Joshi <adv.manasi.joshi@outlook.com>, Aniruddha Kulkarni <aniruddha1488@gmail.com>, parag rao <advparagsrao@gmail.com>

Cc: sruthik96 <sruthik96@proton.me>

Dear All,

Please find attached- Copy of Rejoinder on behalf of the Applicant in OA No. 15 of 2020/WZ Krishna Marathe Vs. Union of India & Ors.

Thank & Regards

Counsel for the Applicant

 **Krishna Marathe.pdf**
2965K