

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 55 OF 2021

IN THE MATTER OF:

MR. TOUSIF BAGNIKAR

...APPLICANT

Versus

M/S. NIX POLYMERS & OTHERS

...RESPONDENTS

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Omkar Wangikar

Advocate for Applicant

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OBEJCTIONS / REJOINDER / SUBMISSION ON BEHALF OF APPLICANT TO THE REPLY AFFIDAVIT DATED 10.01.2025 FILED BY THE RESPONDENT NO. 1.

MOST RESPECTFULLY SHOWETH :

1. That the instant Objection/Rejoinder/Submission is being filed by the Applicant in the afore-mentioned matter to refute the averments made by the Respondent No. 1, in its Reply dated 10.01.2025.
2. It is submitted that the answering Respondent No. 1 has mechanically filed said Reply without application of mind. Hence, it is submitted that the averments and allegations mentioned in reply of the Respondent No. 1 are denied in toto unless it is specifically admitted or reiterated hereunder and no part of the same may be deemed to have been admitted otherwise.
3. That, upon the conclusion of all pleadings and oral arguments, the Hon'ble Tribunal delivered the final order in open court. During the final hearing and the dictation of the order, the advocate representing the Appellant, who is the Original Respondent No. 1, was present before the Hon'ble Tribunal. Therefore, the same issues and arguments cannot be raised again in a regular manner.

4. Further as per the order dated 18.11.2024 issued by the Hon'ble Supreme Court wherein it is clearly stated that :-

“3. We have perused the impugned judgment. The impugned judgment proceeds on the footing that the report of the Joint Committee was not objected to. That is what is observed by the National Green Tribunal (for short, ‘the Tribunal’) in the impugned judgment. We find from ‘Annexure - 23’ that the present appellant filed detailed objections to the report of the Joint Committee. The said objections have not been considered by the Tribunal.

4. Only on this ground, we set aside the impugned judgment and order dated dated 12th April, 2023 and the order dated 22nd May, 2024.”


That to address this specific issue the Hon'ble Supreme Court has retore the said Original Application. However, said the said objections have already been considered by this Hon'ble Tribunal while final argument in said OA, also in Appeal No. 01 of 2022 and MA No. 08 of 2024.

5. The Respondent No. 1 has deliberately failed to submit a copy of the final order dated 12.04.2023 in Appeal No. 01 of 2022 before the Hon'ble Supreme Court. This constitutes a clear suppression of essential facts before the Hon'ble Supreme Court. Appeal No. 01 of 2022, filed by Respondent No. 1, raises objections concerning the report of the Joint Committee clearly mentioned in the grounds, which has already been addressed by this Hon'ble Tribunal. Therefore, due to this suppression, a substantial penalty should be imposed on Respondent No. 1. Hereto annex the copy of order dated 12.04.2023 in Appeal No. 01/2022 issued by this Hon'ble Tribunal as **Annexure R-1**.
6. The Respondent No. 1 has failed to provide the necessary documentation to demonstrate that the industry in question was closed during the COVID-19 pandemic. Additionally, there is no clearly defined closure period indicated by Respondent No. 1 related to COVID-19. Therefore, in the absence of these specific documents, Respondent No. 1 cannot claim any benefits for the entire duration of the pandemic.

7. The operations of Respondent No. 1 are being conducted without the necessary approval as Consent from the Maharashtra Pollution Control Board (MPCB). Respondent No. 1 is engaging in unlawful activities on the premises of Rajdhani Spinning Mills Pvt. Ltd., located at L-57 MIDC Kupwad, Sangli. Additionally, Respondent No. 1 has not secured the required sub-letting permission from MIDC, nor has there been a request for an electricity connection. This indicates that the entire operation of Respondent No. 1 is entirely illegal and unauthorized. Therefore, any request for a reduction in the EDC for such an illegal operation should be denied.
8. That the industry of Respondent No. 1 is using electricity supply and water from the M/s. Rajdhani Spinning Mills Pvt. Ltd. Having electricity consumer number 279249005270. During the covid also the entire industry of the Respondent No. 1 is operating and functioning. Further the Respondent No. 1 intentionally and deliberately not attached the electricity bills during the covid.
9. It is essential to highlight that the Closure Direction issued by the MPCB on 27.09.2021 against Respondent No. 1 prompted the latter to file Appeal No. 01/2022 with this Hon'ble Tribunal. Subsequently, the Hon'ble Tribunal delivered a final order in OA No. 55/2021 on 12.04.2023. Following this, Respondent No. 1 submitted Miscellaneous Application No. 08/2024 to this Hon'ble Tribunal, which was ultimately rejected on 22.05.2024. Therefore, all arguments and contentions presented by Respondent No. 1 have already been thoroughly addressed by this Hon'ble Tribunal; nevertheless, Respondent No. 1 continues to reiterate these points before the Tribunal.

Therefore it is humbly prayed that this Hon'ble Tribunal may be pleased to record these objection/rejoinder/submission behalf of the Applicant to the Reply dated 10.01.2025 filed by the Respondent No. 1, and grant the prayers in original application, and pass such further or other orders in the interest of environmental justice.

Place : Sangli
Date : 30.01.2025


Advocate for Applicant

AFFIDAVIT

I, Mr. Tousif Bagnikar, R/o. Shaan Bunglow, Plot No. 41 and 42, Balaji Nagar, Kupwad Road, Sangli, District Sangli, Maharashtra-416416, do hereby make an oath to swear as under –

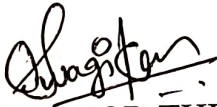
1. That I am the sole Applicant in the present Original Application and I am well conversant with the facts and circumstance of the case and competent to file this affidavit.

The accompanying objection/ submission/ reply to the report dated 30.01.2025 has been drafted under my instruction and the facts mentioned therein are true to my knowledge and the records obtained.

VERIFICATION

I, the above named deponent do hereby verify that the contents of Para 1 and 2 of the above affidavit are true to my knowledge.

Hence signed and verified at Sangli on this 30th day of January 2025.



ADVOCATE FOR THE APPLICANT



DEPONENT

Noted Register
Serial Number...
Solemnly affirmed
BEFORE ME

Adv. S. M. Chougule
Notary Government of India
Miraj, Dist. Sangli Reg. No. 9135

30 JAN 2025



Item No. 4

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Appeal No. 01/2022 (WZ)

M/s. Nix Polymers

.....Appellant

Versus

Maharashtra Pollution Control Board & Ors.

....Respondent(s)

Date of hearing: 12.04.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Appellant : Mr. Abhijeet N. Pange and Mr. Tejas S. Dandagava,
Advocates

Respondent(s) : Ms. Manasi Joshi, Advocate for R-1 & 2/MPCB
Mr. Rahul Garg along-with Mr. Raghvendra Kulkarni,
Advocates for R-4/CPCB

ORDER

1. This appeal has been preferred against the impugned order dated 27.09.2021, where-by the Respondent Nos. 1 & 2/MPCB had directed the Appellant under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 and Hazardous & Other Waste (Management & Transboundary Movement) Rules, 2016 to close down the unit for the non-compliances noted in the said order.

2. In brief the facts of this case are that the Appellant is running a small industrial unit at Plot No. L-57, Near New Diamond Cold Storage, MIDC Kupwad, Tal-Miraj, District- Sangli, which is engaged in the business of manufacturing & sale of Fiber Glass Reinforced Plastic Products (without washing activity) and related products. The said unit

was granted Consent to Establish on 14.08.2015 for the period of 5 years. Due to pandemic, the unit of Appellant remained closed. The Appellant failed to file application for Renewal of Consent to Establish from Maharashtra Pollution Control Board. The Complainant- Mr. Tousif Bagnikar (Applicant in the Original Application No. 55/2021) had filed a complaint against the Appellant on 19.05.2021, based on which, the Respondent No. 2/MPCB visited the site on 09.07.2021 and on that day, he came to know for the first time that a complaint was made against the Appellant related to water pollution. The Appellant is not generating any trade effluents from its unit. But it is admitted that there were few non-compliances on their part. The Appellant had orally assured that within a period of 90 days, he would be making all the compliances. Further the Respondent No. 2 issued Warning Notice dated 09.07.2021 to the Appellant, which was not served upon the Appellant. The Respondent No. 1/R.O., MPCB had issued closure direction on 27.09.2021 (impugned here-in) noticing there-in following non-compliances:-

- “ 1. *Your unit is engaged in the manufacturing of unsaturated polyester Resin-10MT/D by using phthalic anhydride and maleic anhydride since August 2015 without obtaining consent from Board.*
2. *You have installed 02 no of reactors and 02 no of blenders without any Air Pollution Control system.*
3. *You have stored empty drum/full drum in the premises unscientifically & hap hazardously.”*

3. Pursuant to the said direction, the Appellant has stopped the manufacturing process and closed the unit. The said closure direction has been issued without verification of the actual details. The Appellant had applied for Consent to Establish before Maharashtra Pollution Control Board on 06.10.2021, which is still under process and therefore, it is alleged that the impugned order has been passed arbitrarily without application of mind and the same deserves to be set aside.

4. This appeal was first admitted on 25.01.2022 and notices were directed to be issued to the Respondents.

5. Service affidavit has been filed from the side of Appellant, as per which service of notice upon all the Respondents is found to be sufficient.

6. From the side of Respondent Nos. 1 & 2/MPCB, a reply affidavit dated 01.04.2022 has been filed, where-in it is submitted that the unit was given Consent to Establish under Orange Category on 14.08.2015 for manufacturing of Fiber Glass Reinforced Plastic Products. The said unit was visited by the joint committee on 23.08.2021 and it was observed that the industry was engaged in manufacturing of unsaturated Polyester Resin, which is unconsented along-with Fiber Glass Reinforced Plastic Products. The industry is operating since 25.05.2015 without Consent to Operate nor has it applied for obtaining Consent to Operate till the date of inspection carried out by the Joint Committee on 23.08.2021. Pursuant to the complaint made by one Shri Tousif Bagnikar, the Board officials had inspected the site of the Appellant on 09.07.2021 and noticing the non-compliances, had issued warning notice dated 09.07.2021 but in-spite of that, no steps were taken to rectify the infirmities.

7. From the side of Respondent No. 4/CPCB, reply affidavit has been filed but it has no relevance regarding the present case.

8. After having heard the arguments of learned Counsel for the parties and perused the record, we are of the view that the learned Counsel for the Appellant has candidly admitted that he did not apply for Consent to Operate till date, therefore, the Appellant even could not have operated, therefore, the impugned closure order which has been assailed, seems to

have been correctly passed because of the main violation, which was that the Appellant was operating the said unit without Consent to Operate.

9. Hence, this appeal deserves to be dismissed and is accordingly dismissed.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

April 12, 2023
Appeal No. 01/2022 (WZ)
P.Kr