

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****WESTERN ZONE BENCH AT PUNE****ORIGINAL APPLICATION NO. 81 OF 2023**

JIGNESHBHAI CHHAGANBHAI TOGADIYA

...APPLICANT

VERSUS

STATE OF GUJARAT &amp; ORS.

...RESPONDENTS

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**THROUGH**

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

ORIGINAL APPLICATION NO. 81 OF 2023

**IN THE MATTER OF:**

JIGNESH BHAI CHHAGANBHAI TOGADIA

...APPLICANT

VERSUS

STATE OF GUJARAT & ORS.

..RESPONDENTS

**REJOINER TO THE REPLY BY RESPONDENT NO. 7 (M/S M.M. INFRA  
BUILDCON) DATED 13.08.2024 ON BEHALF OF THE APPLICANT**

**MOST RESPECTFULLY SHOWETH:**

1. That the Applicant had filed the above-mentioned Original Application No. 81 of 2023 before this Hon'ble Tribunal regarding the illegal and unscientific mining in the CRZ area of Tapi River near village Dumas, Taluka Majura in Surat district of Gujarat. The said activity is in violation of the Coastal Regulation Zone Notification, 2011, EIA Notification 2006, Sustainable Sand Mining Management Guidelines, 2016 (SSMMG) and Enforcement and Monitoring Guidelines for Sand Mining, 2020 (ESMGSM) issued by MoEF&CC and orders and directions passed by this Hon'ble Tribunal.
2. That the present Rejoinder is being filed in response to the Reply dated 13.08.2024 by the Respondent No. 7 i.e. M/s M.M. Infra Buildcon (hereinafter referred to as 'Project Proponent'). At the outset, the Applicant denies the contents of the Reply filed by the Respondent No. 7 unless expressly admitted

or are a matter of record. The Applicant reiterates that all facts and submissions made in the Original Application and Response to the Joint Committee Report to be true and correct and same may be read as part of the instant rejoinder and are not being repeated for the sake of brevity.

**PRELIMINARY SUBMISSIONS AND OBJECTIONS:**

3. That the Applicant is making the following preliminary submissions and objections to the contentions of the Project Proponent raised in the Reply:

**i) The Project Proponent has been provided with ample opportunity to provide their stance/objections during Joint Committee Report preparation:**

a) That the Joint Committee conducted site visit on 19.08.2023 after informing both the Applicants as well as the Project Proponent, telephonically. However, the Project Proponent failed to be present during site visit.

b) That further, the Joint Committee asked the Project Proponent to submit written representation to RO, GPCB-Surat within 7 days, which the Project Proponent failed to do so, and is also silent on that aspect in the above-mentioned Reply. The relevant portion from the Joint Committee Report as stated in **Para i, Chapter-6: Compliance as per Terms of Reference,**

**Pg. 236** is reproduced below:

***"i. Visit the site after intimating Applicant and Project Proponent – respondent No.7***

*Expert Group has conducted site visit on 19-08-2023. The Applicants & Project proponent was informed to remain present at site visit as per Hon. NGT order vide email dated 10-08- 2023 as well as on 18-08-2023. Applicants Mr. M.S.H. Shaikh & Mr. Jignesh Togadia were present at site. Project proponent was not remained present at site. He was also contacted telephonically during site visit. He informed that due to unwell of his family*



*member he was not able to present before the Expert Group. Expert Group has asked him to submit written representation to RO, GPCB-Surat within 7 days. RO, GPCB-Surat (Coordinator) has not received any representation from project proponent."*

- c) It is submitted that the Hon'ble Tribunal in its order dated 29.05.2023 had directed the Joint Committee to visit the site after 'intimating' the Applicants and Project Proponent. Such intimation was done by the Joint Committee to both the parties. Considering that the Project Proponent is a partnership firm and not an individual, since, the authorized representative was unavailable for the site visit on the day of inspection, it could have appointed any other representative of the firm to be present for the same. However, without prejudice to the issue of the Project Proponent not being able to be present, the TOR issued by this Hon'ble Tribunal vide order dated 29.05.2023 has been complied with by the Joint Committee.
- d) That further, after the Joint Committee Report dated 29.04.2024 was presented before this Hon'ble Tribunal, vide order dated 15.05.2024, the Hon'ble Tribunal directed the Registry to serve a copy of the said Report to the Project Proponent and granted the Project Proponent to file its objections thereafter.
- e) That accordingly, the Project Proponent has filed its above-mentioned Reply dated 14.08.2024 raising objections to the Joint Committee report, effectively utilizing the sufficient opportunity granted to rebut the findings of the Report. As per the Hon'ble Supreme Court's judgement in ***Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey and Ors.*** [2023 SCC OnLine SC 824] dated 05.07.2023, the apex court had

restated the Official Notice Doctrine. The relevant portion of the judgement is reproduced below:

"22. In this context, it would be useful to refer to what is known as the "official notice" doctrine, which is a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. This has been explained by Schwartz in his work on Administrative Law. The aforesaid doctrine applies with greater force to a judicial/adjudicatory body.

23. **Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an Expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal."**

A copy of the relevant portion of the judgement of the Hon'ble Supreme Court in *Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey and Ors.* [2023 SCC OnLine SC 824] dated 05.07.2023 is annexed herewith as **ANNEXURE A-1.**

- f) That therefore, considering the above judgement of the Hon'ble Supreme Court, this Hon'ble Tribunal and the Joint Committee has provided sufficient opportunity to the Project Proponent to provide their stance and objections during site inspection conducted on 19.08.2023, as well as before this Hon'ble Tribunal. The Project Proponent deliberately failed to provide their



written representation to the Joint Committee during the time of preparation of the Report, even after being informed by the Joint Committee. It is pertinent to note that the Project Proponent was aware about the present proceedings, based on the telephonic conversation from the Joint Committee for the site visit, which the Project Proponent has accepted in its Reply. Yet, the Project Proponent chose not to be present for the proceedings before the Hon'ble Tribunal.



- g) That nonetheless, the Project Proponent has sufficiently objected to the Joint Committee report through the above-mentioned Reply, and hence, cannot claim the defence of principle of natural justice, in light of the above-mentioned judgement of the Hon'ble Supreme Court.

**ii) Project Proponent has incorrectly stated that they have permission for dredging in CRZ I-B and II area:**

- a) That the Project Proponent has repeatedly stated that they have undertaken dredging and not sand mining. However, the Joint Committee Report dated 29.04.2024 has clearly observed that the Project Proponent has indeed undertaken illegal and unscientific mining of sand from the Tapi riverbed under the guise of dredging activity. The Joint Committee has further confirmed that the project proponent failed to take any permission under the environmental statutes which includes CRZ clearance and also failed to comply with the Sand Mining Guidelines, 2016 and 2020.
- b) It is pertinent to note that the Project Proponent has also failed to show any CRZ Clearance in their Reply. They did not obtain CRZ clearance from the Coastal Zone Management Authority or MoEF&CC, which is mandated as per

para 4.2 of the CRZ Notification, 2011 before undertaking any permissible or regulated activity such as dredging. The Hon'ble Tribunal in the case of ***Sakeer v. State of Kerala [2020 SCC Online NGT 3300]***, vide order dated 24.12.2020 held that CRZ clearance is mandatory for dredging activity.

- c) That further, the Project Proponent has stated that dredging has been allowed as a permitted/regulated activity in the CRZ-IV area as per the CRZ Notification, 2019. Firstly, it is submitted that location of mining in the present case is falling within CRZ-IB and CRZ-II areas of the CRZ Notification, 2011, as stated by the Applicant and by the Joint Committee. Therefore, the applicability of CRZ –IV area does not arise in the present case. Further, the activity of dredging requires clearance as per Para 4.2 of the CRZ Notification, 2011 which states that all permissible or regulated activities under CRZ zone area is required to obtain clearance prior to commencement of any activity. No such permission has been obtained in the present case by the Project Proponent and no mentioning regarding the same has been done in the present Reply. It is submitted that wherever the permit holder is permitted to sell the sand, then the activity will amount to sand mining [***Udaya Suvarna & Anr. v. Udupi District Sand Monitoring Committee & Ors. (O.A. No. 252 of 2017)(SZ)***] and would require Environment Clearance under the EIA Notification, 2006. Secondly, the provisions of CRZ Notification, 2019 would not be applicable in the present case because the Coastal Zone Management Plan (CZMP) of Surat district is prepared according to the CRZ Notification, 2011 and had not been



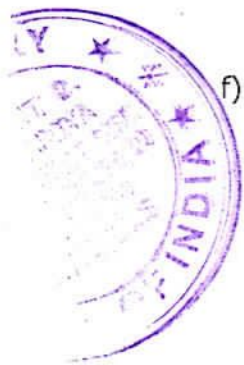
updated according to the latest Notification, during the time of filing of the Original Application. Hence, CRZ Notification 2011 shall be applicable and not CRZ Notification, 2019. Therefore, the contention of the Project Proponent that dredging in CRZ-IV area is permissible according to the CRZ Notification, 2019 does not stand.

- d) That the sole purpose of the Project Proponent was commercial extraction of ordinary sand, which was successfully carried out under the pretence of dredging activity. The mining activity was undertaken without preparation of District Survey Report (DSR) even after the order dated 29.09.2022 given by this Hon'ble Tribunal in ***Subhash Bhai Ishwar Bhai Parmar v. State of Gujarat & Ors. (O.A. No. 34 of 2022)***. The project proponent has not produced any permission for onshore activity and has failed to furnish any information and documents to the Joint Committee even after being given ample opportunity of being heard.
- e) That the Joint Committee in its Report has also come to the conclusion, after perusing all the documents and permissions that the Project Proponent was undertaking mining activity under the guise of dredging. The relevant portion of the Report **[4.1, Chapter-4: Deliberation of Joint Committee, Pg. 211]** is reproduced below:

*"The project proponent at some places applied for dredging and at others for ordinary sand mining. **The only purpose of the project proponent was commercial extraction of ordinary sand, which he successfully carried out in the garb of dredging activity.** Project proponent has not furnished any permission for on shore activity. Project proponent has not produce any documents& furnished any information to Expert Group even after given ample opportunity of being heard. **Considering above circumstances & referring to above documents, Expert group construed that M/s M. M.***



***Infrabuidcon activity should be considered as Mining activity.*** It also indicates that overall activity is operated in violation of Environmental laws & prevailing other laws. No any Environmental permission was taken for aforesaid activity. This activity is also prohibited under Clause-4(viii) of the CRZ Notification-2019 & 2011."



- f) That sand mining under the guise of dredging cannot be undertaken in CRZ area. Sand mining is a prohibited activity in the CRZ area as per Para 3(x) of the CRZ Notification, 2011. Further, according to ***Udaya Suvarna & Anr. v. Udupi District Sand Monitoring Committee & Ors. (O.A. No. 252 of 2017)(SZ) [Pg 26, Original Application]*** and ***Tribunal on its own motion .... v. Chief Secretary of Kerala (O.A. No. 75 of 2020) (SZ) [Pg 25, Original Application]***, if excess sand removed due to dredging is sold for commercial purposes, it will amount to mining. Such mining activity would be required to apply for an Environmental Clearance.

**PARA WISE REPLY:**

4. That the contents of Para 1 are denied except which are a matter of record. It is submitted that the Applicant had served the copy of the Original Application by speed post on 10.06.2023, as directed by this Hon'ble Tribunal vide order dated 29.05.2023. It is denied that the service affidavit shows that the service was effected upon the security guard only. As can be seen from the Service Affidavit filed by the Applicant dated 28.06.2023, the service was complete to the Project Proponent via speed post on 10.06.2023 at 15:19 pm marked as "Item Delivered (Addressee)" wherein the 'Addressee' is the Project Proponent. Further, the Applicant has duly served the copy of the Original Application, and all relevant documents to the Project Proponent on 17.08.2024 in compliance of order dated 16.08.2024 of this Hon'ble Tribunal.

A copy of the service of the Original Application, and all relevant documents to the Project Proponent on 17.08.2024 in compliance of order dated 16.08.2024 of this Hon'ble Tribunal is annexed herewith as **ANNEXURE A-2.**

5. That the contents of Para 2 are denied. It is submitted that the Applicant is a resident of Rajkot district and is rightfully concerned about the environment and ecology of the state. On his visit to Surat in Late November, the Applicant noticed a large number of trucks carrying huge amounts of wet sand leaving from the said area. The Applicant has filed numerous RTIs to seek information about the project details of the sand mining operation. Further based on the replies to the RTIs and documents received, the Applicant had sent a representation dated 24.12.2022 to the concerned departments objecting to the sand mining permit in the CRZ area and the illegal sand mining being carried out while praying for immediate action. However, on not receiving any satisfactory response, the Applicant filed the present Original Application, with *bona fide* concern for the environment.
6. That the contents of Para 3 are baseless and denied. It is submitted that during the first hearing of the Original Application, the Applicant is not required to serve a copy to the Respondents unless the matter has been admitted and notice issued to the Respondents. Therefore, no question arises regarding recalling of the order dated 29.05.2023, by which the Hon'ble Tribunal was pleased to admit the above-mentioned Original Application, and notices were issued to the Respondents including the Project Proponent accordingly. As for the service of copy to the Project Proponent, the copy of the Original Application has been duly served to them as stated in Para 4 of the said Rejoinder. Hence, the Project



Proponent was very much aware about the proceedings of this Hon'ble Tribunal, yet chose to deliberately not appear before this Hon'ble Tribunal in the next date of hearing i.e. on 31.07.2023 and subsequent orders till 15.05.2024, pleading that they were unaware, despite receiving copies of the Application, notice and order of this Hon'ble Tribunal dated 29.05.2023 from the Applicant.

7. That the contents of Para 4 are a matter of record and do not merit a response from the Applicant. However, it is important to note that the letter in Annexure R-2 (Pg. 471), states that "... *Various minerals such as sand, silt, soil, gravel, etc., resulting from the dredging, should be accumulated and transported for sale only after obtaining the necessary royalty pass/permit and permission from the Mines and Minerals Department.*" Considering the area to be a CRZ IB and CRZ-II area, such act of taking permission for transportation and sale amounts to sand mining, as stated in ***Udaya Suvarna & Anr. v. Udupi District Sand Monitoring Committee & Ors. (O.A. No. 252 of 2017)(SZ) [Pg. 26, Original Application]***. Therefore, the Respondent No. 5, who had issued the said permission to the Project Proponent must be held answerable for issuing the permit.
8. That the contents of Para 5 are a matter of record. However, it is pertinent to note that the Joint Committee assessed that the mined quantity of sand was actually greater than the quantity shown in the royalty pass records based on secondary data and satellite images (Point IX in Report). The Quarry Permits: QP2100001550 and QP210001551 respectively, only permitted for extraction of sand up to 1,00,000 MT each. However, the actual sand mined was found to be up to 13,10,115.633 MT, which is at least close to 7 times more than the



permitted quantity. [**Para ii, Chapter-6: Compliance as per Terms of Reference, Pg. 236**]. Even the extension permit for allowing excavation of ordinary sand through letter dated 1.11.2022 (Annexure R-3, Pg. 476) does not extend the mining of sand limit, but only the time for sand mining up to 180 days subject to original terms and conditions of the permit, which the Project Proponent has incorrectly stated to be an extension on the sand mining quantity limit. Further, the sand mining permit is only for one mine with Survey No.s 1005, 1003, 1002, 951, 950, 973/2 and not the other mining site as mentioned in Annexure A-4, Pg. 57.



9. That the contents of para 6 and 7 are a matter of record and do not merit a reply from the Applicant. However, it is pertinent to note that the Project Proponent was required to obtain CRZ Clearance, which was clearly not even applied for as noted by the Joint Committee, and the Project Proponent is also silent on the same.
10. That the contents of para 8 are a matter of record. However, it is pertinent to note that there has been a clear violation of the terms and conditions as stipulated in the NOC by the Narmada Water Resources, Water Supply and Kalpsar Department dated 30.12.2022 for carrying out the desilting activity by way of dredging. These are:
  - a) The Condition No. 1 stated that continuous maintenance and repair of the road must be done by the agency. However, the Joint Committee Report clearly states that heavy damage has occurred due to heavy loaded truck movement as stated in Entry 1, Table B, TOR (ix), Chapter-6: Compliance as per Terms of Reference, Pg. 240.

b) Condition no.2 states that the agency must obtain all necessary permissions from relevant government departments in advance and perform the tasks as per their guidelines and approvals. However, the Joint Report has confirmed that respondent no.7 has failed to take permission under the environmental statutes which includes CRZ clearance and has also failed to comply with the Sand Mining Guidelines 2016 and 2020, as mining was undertaken without preparation of the District Survey Report. This is also contrary to the order dated 29.02.2022 by this Hon'ble Tribunal in ***Subhash Bhai Ishwar Bhai Parmar V. State of Gujarat & Ors. (O.A. No. 34 of 2022) (WZ)*** wherein it has held that no proceeding/e-tendering be done in respect of sand mining without preparation of DSR.

c) Condition no. 3 states that in case of illegal mining, the given NOC shall be immediately revoked. While illegal mining activity has clearly been undertaken without obtaining all the necessary clearances and non-compliance on part of the Project Proponent, the respective departments due to their lackadaisical approach have failed to prevent the illegal mining from occurring in the first place, which has resulted in destruction of the natural vegetation and mangroves over an area of 5 ha. on the bank of Tapi River.

11. That the contents of Para 9, 11 and 12 are a matter of record.

12. That the contention made in Para 10 are denied as misleading. It is submitted that there is a stark difference between dredging and sand mining. This Hon'ble Tribunal in ***Tribunal on its own motion Suo Motu based on the news item published in The Hindu Newspaper dated 30.05.2020, "Kerala Forest***




*Department told to permit sand removal from Pampa" v. Chief Secretary of Kerala (O.A. No. 75 of 2020) (SZ) [Pg. 25, Original Application]* had held that if excess sand removed due to dredging is sold for commercial purposes, it will amount to mining. Such mining activity would be required to apply for an Environmental Clearance. Therefore, the Project Proponent is incorrect in stating that dredging activity is permissible, with sale permit by charging royalty. Such commercial activity is defined as sand mining and not dredging. Further, sand mining is a prohibited activity in the CRZ zone as per Para 3(x) of the CRZ Notification, 2011.




13. That the contents of Para 13 state that Respondent No. 7 was not served with the notice by the Expert Committee and proceeded with the site inspection in their absence is denied. The Project Proponent failed to be present despite being served with notice beforehand along with establishing contact over phone as well. There has been no submission of any written representation despite giving them appropriate opportunity of being heard. The Project Proponent has contemptuously remained non-cooperative throughout the Joint Committee exercise with respect to this Hon'ble Tribunal order, causing undue delay in compliance. Further, It is submitted that the Hon'ble Tribunal in its order dated 29.05.2023 had directed the Joint Committee to visit the site after 'intimating' the Applicants and Project Proponent. Such intimation was done by the Joint Committee to both the parties. Considering that the Project Proponent is a partnership firm and not an individual, since, the authorized representative was unavailable for the site visit on the day of inspection, it could have appointed any other representative of the firm to be present for the same. However,

without prejudice to the issue of the Project Proponent not being able to be present, the TOR issued by this Hon'ble Tribunal vide order dated 29.05.2023 has been complied with by the Joint Committee.




14. While dredging is exempted from prohibited activity, it requires CRZ clearance as per para 4.2 of the CRZ Notification 2011, which states that all permissible or regulated activities under CRZ-I and CRZ-II area to obtain clearance prior to commencement of any activity and no such clearance in the present case has been obtained. While NOC and permits were indeed issued by the concerned departments to carry out dredging activities, they were given without undertaking any proper studies, monitoring and without mentioning the safe disposal of the sediments. It was also observed that no need had arisen for the dredging activity to be undertaken in the Tapi River. As regards to no illegal excavation of sand being undertaken by the Respondent No. 7, the Joint Committee assessed that the mined quantity of sand was actually greater than the quantity shown in the royalty pass records. The actual sand mined was found to be up to 13,10,115.633 MT which is at least close to 7 times more than the permitted quantity.

15. That the contention made in Para 14 and 15 are denied. It is denied that the report prepared is without any application of mind because the Joint Committee Report provided an in-depth report after doing a thorough analysis of the permissions granted and analysis showing damage done on the sand mining site. The Joint Committee hence, observed that the NOC and permission were issued by both the departments without undertaking any due diligence and without monitoring. Such gross negligence on part of the authorities resulted in



the destruction of the environment on the bank of the Tapi River. The Joint Committee has further confirmed that Respondent No. 7 failed to take any permission under the environmental statutes which includes CRZ clearance and also failed to comply with the Sand Mining Guidelines, 2016 and 2020, as raised by the Applicant in the present Original Application. From the Reply it can be seen that the Project Proponent has also not produced any permits issued under the environmental statutes. It is further denied that the Applicant is trying to mislead the Hon'ble Tribunal by citing the present issue as illegal mining is false. The Joint Committee in its report has submitted and accepted the fact that the Project Proponent has indeed undertaken illegal and unscientific mining of sand from the Tapi riverbed under the garb of dredging activity and therefore does not merit any further reply as the Project Proponent is trying to arm-twist the facts of the case.

16. That the contents of Para 16 is denied as incorrect and misleading. Firstly, it is submitted that location of mining in the present case is falling within CRZ-IB and CRZ-II areas of the CRZ Notification, 2011, as stated by the Applicant and by the Joint Committee. Therefore, the applicability of CRZ -IV area does not arise in the present case. Further, the activity of dredging requires clearance as per Para 4.2 of the CRZ Notification, 2011 which states that all permissible or regulated activities under CRZ zone area is required to obtain clearance prior to commencement of any activity. No such permission has been obtained in the present case by the Project Proponent and no mentioning regarding the same has been done in the present Reply. It is submitted that wherever the permit holder is permitted to sell the sand, then the activity will amount to sand mining



*[Udaya Suvarna(Supra)]* and would require Environment Clearance under the EIA Notification, 2006. Secondly, the provisions of CRZ Notification, 2019 would not be applicable in the present case because the Coastal Zone Management Plan (CZMP) of Surat district is prepared according to the CRZ Notification, 2011 and had not been updated according to the latest Notification, during the time of filing of the Original Application. Hence, CRZ Notification 2011 shall be applicable and not CRZ Notification, 2019. Therefore, the contention of the Project Proponent that dredging in CRZ-IV area is permissible according to the CRZ Notification, 2019 does not stand.

17. That the contents of para 17 are denied. The Joint Committee in its report has stated that the mined material was being used for construction work based on the submission of the Geology and Mining Department, Surat. It is clear from such submission that the project proponent had actually undertaken sand mining activity and not dredging, since the excavated sand was being sold for construction purposes. The Joint Committee also observed that no study or monitoring was conducted by the Fisheries Department prior to issuance of NOC and permission to the Project Proponent, which is gross negligence on part of the said authority.
18. That the contents of Para 18 are denied in light of the facts and documents annexed before this Hon'ble Tribunal by way of this present Original Application, and the Joint Committee Report dated 29.04.2024, it can be seen that the Project Proponent is trying to misrepresent the correct facts of the case.

19. That therefore, the Hon'ble Tribunal in the interest of justice may consider the above submissions on behalf of the Applicant for further adjudication of the matter.

*Togadiya*  
APPLICANT

THROUGH

*Ritwick Dutta*

RITWICK DUTTA

*Rahul Choudhary*

RAHUL CHOUDHARY  
ADVOCATES

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Email:- Litigation@dclawchambers.com

Place: New Delhi/Pune

Date: 30.10.2024

**VERIFICATION:**

Verified by Jignehsbhai Chhaganbhai Togadiya, s/o Shri Chhaganbhai Mavajibhai Togadiya, aged about 40 years, R/o Shriram Shiv Shraddha Park-1, Behind Nehru Nagar, 80 Foot Road, Near Lala Park, Bhakti Nagar, Kotda Sangani, Rajkot, Gujarat-360002 that the contents of Paragraphs 1 to 19 are true to my personal knowledge and nothing material has been concealed therefrom.

*Togadiya*  
APPLICANT

Place: New Delhi/Pune

Date: 30.10.2024

## BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

## WESTERN ZONAL BENCH AT PUNE

## ORIGINAL APPLICATION NO. 81 OF 2023

IN THE MATTER OF:

JIGNESHBHAI CHHAGANBHAI TOGADIA

...APPLICANT

VERSUS

STATE OF GUJARAT &amp; ORS.

..RESPONDENTS

AFFIDAVIT

I Jignehsbhai Chhaganbhai Togadiya, s/o Shri Chhaganbhai Mavajibhai Togadiya, aged about 40 years, R/o Shriram Shiv Shraddha Park-1, Behind Nehru Nagar, 80 Foot Road, Near Lala Park, Bhakti Nagar, Kotda Sangani, Rajkot, Gujarat-360002, do hereby solemnly affirm and declare as under:

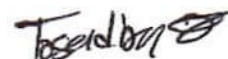
1. That I am the Applicant in the above titled Application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.



DEPONENT


VERIFICATION

Verified on this 30 day of octo., 2024 that the contents of the present affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT



Before Me  
  
 BALVANT D. SAGPARIYA  
 NOTARY (GOVT. OF INDIA)  
 RAJKOT - GUJARAT

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 Receipt No. .... 342 .....  
 Date ... 30.10.24 .....



भारत सरकार

Government of India

Aadhaar No. Issued: 15/01/2014



તોગડીયા જીગ્નેશ છગનભાઈ

Togadiya Jignesh Chhaganbhai

જન્મ તારીખ / DOB : 26/08/1983

પુરુષ / Male



આધાર એ ઓળખનો પુરાવો છે, નાગરિકતા અથવા જન્મ તારીખનો નહીં.  
તેનો ઉપયોગ માત્ર ચકાસણી (ઓનલાઇન પ્રમાણીકરણ અથવા ક્યુઆર  
કોડ/ઓફલાઇન એક્સએમએલનું સ્કેનિંગ) સાથે જ થવો જોઈએ.

**Aadhaar is proof of identity, not of citizenship  
or date of birth. It should be used with verification (online  
authentication or scanning of QR code / offline XML).**

**5774 7921 2285**

मेरा आधार, मेरी पहचान

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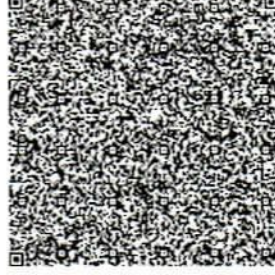
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SINGRAULI SUPER THERMAL POWER STATION v.  
ASHWANI KUMAR DUBEY

35

**(2023) 8 Supreme Court Cases 35**

a (BEFORE B.V. NAGARATHNA AND PRASHANT KUMAR MISHRA, JJ.) 2J  
SINGRAULI SUPER THERMAL POWER STATION .. Appellant;  
*Versus*  
ASHWANI KUMAR DUBEY AND OTHERS .. Respondents.

b Civil Appeals No. 3856 of 2022<sup>†</sup> with Nos. 4525,  
4529 and 4581 of 2022<sup>†</sup>, decided on July 5, 2023

**A. Environment Law — National Green Tribunal Act, 2010 — Ss. 19, 14 and 15 — Adjudication of disputes — Proper mode of disposal and basis of decision of NGT — Compliance with principles of natural justice — Necessity of**

c — **Report of Expert Committee as well as recommendations of it — Made the basis of the directions issued by NGT while taking decision in matter without notice of report to a party — Validity — Held, not disclosing such a report or any other relevant material that comes to knowledge of NGT in advance, to a party in dispute so as to give an opportunity for discussion and rebuttal, held, illegal**

d — S. 15 empowers NGT to award compensation to victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for restitution of environment — NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative Expert Committees — Expert Committees may be appointed to assist NGT in performance of its task and as an adjunct to its fact-finding role — But adjudication under statute is entrusted to NGT and cannot be delegated to administrative authorities — Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees

e — NGT is a judicial body and therefore exercises adjudicatory function — Very nature of an adjudicatory function would carry with it requirement that principles of natural justice are complied with, particularly when there is an adversarial system of hearing of cases before the tribunal concerned, such as NGT, or for that matter before courts in India — NGT though is a special adjudicatory body constituted by an Act of Parliament, nevertheless, discharge of its function must be in accordance with law which would also include compliance with principles of natural justice as envisaged in S. 19(1)

f — Factual information which comes to knowledge of NGT on basis of report of Committee constituted by it, if to be relied upon by the NGT, then, same must be disclosed to parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to Tribunal

g — Held, making report of Expert Committee as well as its recommendations, basis of directions by NGT was improper

h <sup>†</sup> Arising from the Judgment and Order in *Ashwani Kumar Dubey v. Union of India*, 2022 SCC OnLine NGT 120 (National Green Tribunal, Original Application No. 164 of 2018, dt. 18-1-2022) [Reversed]

a **22.** In this context, it would be useful to refer to what is known as the “official notice” doctrine, which is a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an authority is acting must be appraised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. This has been explained by Schwartz in his work on Administrative Law. The aforesaid doctrine applies with greater force to a judicial/adjudicatory body.

c **23.** Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an Expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal.

d **24.** It is needless to observe that the experts’ opinion is only by way of assistance in arriving at a final conclusion. But we find that in the instant case the report of the Expert Committee as well as the recommendations have been made the basis of the directions and such an approach is improper.

e **25.** We have perused the impugned order<sup>1</sup> of the NGT and particularly para “16” which has been extracted above. It is apparent that the appellant(s) herein who were respondents before the NGT were not given an opportunity to file their objections to the recommendations made by the Committee constituted by the NGT which is apparent by the fact that the recommendations were uploaded on 15-1-2022 and the final order<sup>1</sup> of the NGT was passed three days later on i.e. 18-1-2022. Thus, this is a clear case of there being non-compliance with the principles of natural justice. On the said ground alone the impugned order<sup>1</sup> is set aside, the matter is remanded to the NGT for re-consideration from the stage of the recommendations filed by the Expert Committee constituted by the NGT. The appellant(s) herein are permitted to file their objections, if they are so advised. The NGT shall consider the objections, if any, filed to the recommendations and thereafter dispose of the applications in accordance with law and after giving a reasonable opportunity to all parties.

g **26.** The appeals are allowed and disposed of in the aforesaid terms. Pending application(s), if any, shall stand disposed of.

h

<sup>1</sup> *Ashwani Kumar Dubey v. Union of India*, 2022 SCC OnLine NGT 120



DC Law Chambers <dclaw160@gmail.com>

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**Copy of Documents in Jigneshbhai Chhaganbhai Todadiya Vs. State of Gujarat & Ors. OA No. 81 of 2023**

1 message

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**DC Law Chambers** <dclaw160@gmail.com>

Sat, Aug 17, 2024 at 2:49 PM

To: Saurabh Kulkarni <sdkadvocate@gmail.com>, "mminfrabuildcon2020@gmail.com" <mminfrabuildcon2020@gmail.com>

Dear Sir,

Please find attached- Copy of Documents in Jigneshbhai Chhaganbhai Todadiya Vs. State of Gujarat & Ors. OA No. 81 of 2023

Thanks & Regards

Counsel for the Applicant



Amended Memo of Parties.pdf



Petition.pdf



Report Joint Committee dt. 29.04.2024.pdf



Response to Joint Committee Report of the Applicant.pdf



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Litigation . &lt;litigation@dclawchambers.com&gt;

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**Copy of Rejoinder to reply R-7 on behalf of the Applicant in OA No. 81 of 2023  
Jigneshbhai Chhaganbhai Togadiya Versus. State of Gujarat & Ors.**

1 message

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**Litigation .** <litigation@dclawchambers.com>

Wed, Jan 15, 2025 at 10:37 AM

To: Saurabh Kulkarni &lt;sdkadvocate@gmail.com&gt;, Kamlesh Ode &lt;kamlesh22713@gmail.com&gt;, maulik@nanavatico.com

Cc: Shreepurna Dasgupta &lt;shreepurnadasgupta@proton.me&gt;

Dear Sir/madam,

Please find attached-Copy of Rejoinder to reply R-7 on behalf of the Applicant in OA No. 81 of 2023 Jigneshbhai Chhaganbhai Togadiya Versus. State of Gujarat &amp; Ors.

Thanks &amp; Regards

Counsel for the Applicant

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 **Rejoinder to reply R-7 by applicant.pdf**  
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