

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO. 109 OF 2023**

IN THE MATTER OF:

PRALHAD TUKARAM GAWANDE AND ANR.

.... APPLICANTS

VERSUS

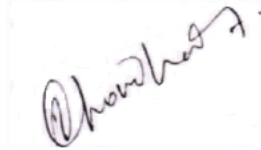
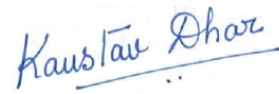
STATE OF MAHARASHTRA AND ORS.

.... RESPONDENTS

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THROUGH

RITWICK DUTTA

RAHUL CHOUDHARY

KAUSTAV DHAR**ADVOCATES****COUNSELS FOR THE APPLICANTS**

N-73, LGF, Greater Kailash – 1,

New Delhi – 110048

Mobile: +91 9312407881

Email: dclaw160@gmail.com**PLACE: PUNE/DELHI****DATE: 04.09.2024**

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE**

ORIGINAL APPLICATION NO. 109 OF 2023

IN THE MATTER OF:

PRALHAD TUKARAM GAWANDE AND ANR. APPLICANTS

VERSUS

STATE OF MAHARASHTRA AND ORS. RESPONDENTS

**REJOINDER ON BEHALF OF THE APPLICANTS TO THE ADDITIONAL
AFFIDAVIT IN REPLY DATED 12.04.2024 FILED BY RESPONDENT
NO. 3**

MOST RESPECTFULLY SHOWETH:

1. That the above-mentioned Application was filed under Sections 14 read with Section 20 of the National Green Tribunal Act, 2010 raising a 'substantial question relating to the environment' as defined under Section 2(m) of the Act. The grievance of the Applicants is with respect to the E-Tender Notice bearing No. 01 for 2023-2024 *vide* dated 18.04.2023 was issued for the purpose of commencing the construction of the Lower Penganga Irrigation Project at Yavatmal in Maharashtra even after the expiry of Environmental Clearance dated 17.05.2007 issued by the Ministry of Environment, Forest and Climate Change. That the valid Environmental Clearance was expired on 16.05.2017 and hence the issuance of the E-Tender notice for the commencement of construction activity is in violation of the Environmental Impact Assessment Notification, 2006 as on present date the project has no valid EC to commence construction.

2. That the instant Joint Rejoinder is being filed in response to the additional affidavit in reply dated 12.04.2024 filed by Respondent No. 3, Lower Penganga Irrigation Project Division, Yavatmal. At the outset, the Applicants deny various statements which have been made and nothing should be assumed to be admitted unless specifically admitted or is part of the record. The Applicants reiterate all the facts and submissions made in the Application to be true and correct and the same may be read as part of the instant rejoinder and are not all being repeated for the sake of brevity.
3. The main contentions raised by Respondent No. 3 that needs rebuttal are as follows:
 - i. Environmental Clearance dated 17.05.2007 is in accordance with Notification dated 1994 and hence wherein it is mentioned that Clearance is granted as per provisions of EIA 2006 is absolutely nothing but a typographical error;
 - ii. The work has started in year 2011 so the Condition No. 8 mentioned in the order of Environment Clearance Certificate dated 17.05.2007 is fulfilled i.e., work commenced within stipulated time period;
 - iii. The Applicant is misleading the Hon'ble Tribunal by referring to Manoj Kumar Mishra and Anr. vs. Union of India & Ors.;

**REJOINDER TO THE ADDITIONAL AFFIDAVIT IN REPLY DATED
12.04.2024 OF R-3, LOWER PENGANGA IRRIGATION PROJECT
DIVISION, YAVATMAL:**

- i. **Environmental Clearance dated 17.05.2007 is in accordance with Notification dated 1994 and hence wherein it is mentioned that Clearance is granted as**

per provisions of EIA 2006 is absolutely nothing but a typographical error;

The Respondent No. 3 in Para No. 2 of the Affidavit dated 12.04.2024 has asserted that Environmental Clearance dated 17.05.2007 is in accordance with Notification dated 1994 and hence wherein it is mentioned that Clearance is granted as per provisions of EIA 2006 is absolutely nothing but a typographical error. That the Applicants herein completely and vehemently deny such submission. The Applicants herein submit that Para No. 4 of the EC letter dated 17.05.2007 (**Annexed as Annexure A/1 of the Original Application at Pg. No. 44**) clearly states that the EC has been granted by the MoEF as per the provisions of EIA Notification, 2006:

"4. The Ministry of Environment and Forests hereby accords environmental clearance only for Maharashtra portion, as per the provisions of Environmental Impact Assessment Notification, 2006 subject to strict compliance of the terms and conditions as follows".

Further, the Respondent No. 2, MoEFCC has clearly recorded in Para No. 8 and Para No. 14 of the Affidavit dated 05.02.2024 that the EC dated 17.05.2007 was granted to the project proponent under the provisions of EIA Notification 2006:

"8. The Ministry vide letter no. J-12011/68/2006-IA.I dated 17.05.2007 issues ED to Lower Penganga Irrigation Project located in the district of Yavatmal of Maharashtra portion only, under the provisions of the EIA Notification, 2006.

[...]

14. Further, it is submitted that since the EC was granted by the Ministry on 17.05.2007 to the project

in question under the provisions of EIA Notification, 2006. The validity of EC dated 17.05.2007 stands expired on 16.05.2017 as the Ministry has communicated to Project Authorities vide its Corrigendum letter dated 27.09.2013, that the EC is valid for a period of 10 years from the date of issuance of EC letter dated 17.05.2007 for commissioning of the project”.

Thus, it is absolutely an incorrect and a misleading contention raised by the Respondent No. 3 that it is a typographical error. That a typographical error can take place once but not repeatedly as in all the subsequent submissions, MoEFCC has recorded and submitted that “the EC was granted by the Ministry on 17.05.2007 to the project in question under the provisions of EIA Notification, 2006”. Hence, under no circumstances, the plea of typographical error as taken by Respondent No. 3 is tenable and hence shall not be entertained.

Thus, it is submitted that the Respondent No. 3 has taken a very lame and baseless argument of typographical error in the EC letter after a passage of seventeen (17) long years only after the filing of the present petition. It is to be noted that it is just an afterthought of the project proponent after filing of the present petition. It is thus pertinent to note that the EC dated 17.05.2007 granted to the Lower Penganga Irrigation Project is in accordance with the EIA Notification, 2006 and hence the subsequent amendments made in the 2006 Notification shall be applicable and are binding to the project in question. Thus, the Lower Penganga Irrigation Project Division is not legally entitled to commence the construction without obtaining a fresh EC as on present date as the EC dated 17.05.2006 has expired on 16.05.2017, hence the E-Tender Notification No. 01 for 2023 dated 18.04.2023 is bad in law and is in complete violation of EIA Notification, 2006.

- ii. **The work has started in year 2011 so the Condition No. 8 mentioned in the order of Environment Clearance Certificate is fulfilled i.e., work is commence in stipulated time period:**

The Respondent No. 3 in Para No. 2 of the affidavit dated 12.04.2024 has contended that the construction work has commenced in the year 2011 prior to the expiry of the EC within the stipulated timeframe. The Applicants herein deny the contention in its entirety. That this Hon'ble Tribunal vide order dated 04.10.2023 directed the Respondent No. 2, MoEFCC to visit the project site and submit the fact finding report regarding construction of project, EC validity and compliance. It is pertinent to note that that the Respondent No. 2, MoEFCC carried out a site inspection on 22.12.2023 and thereafter in its Affidavit dated 05.02.2024 has categorically recorded that 'The percentage of the completed work may be about less than 1%' and directed that:

"13. Undersigned visited the project site and inspected the work carried out at site. Noted that the construction work of downstream bridge pillars have been started and left incomplete long back. According to PP the construction work of project carried out at site was during the year 2011 and 2012. The percentage of the completed work may be about less than 1%. No fresh construction work is carried at site.

14. Further, it is submitted that the EC was granted by the Ministry on 17.05.2007 to the project in question under the provisions of EIA Notification, 2006. The validity of EC dated 17.05.2007 stands expired on 16.05.2017 as the Ministry has communicated to Project Authorities vide its corrigendum letter dated 27.09.2013, that EC is valid for a period of 10 years from the date of issuance of EC letter dated 17.05.2007 for commissioning of the project.

15. In view of the aforesaid, the Project Proponent may be directed not to initiate any construction activity without a valid EC and further, submit a fresh proposal for obtaining EC, under the provisions of the EIA Notification 2006 as amended”.

Thus, the Applicants submit that the MoEFCC has categorically accepted and recorded that the percentage of the completed work is about less than 1% and hence the project proponent is specifically directed to obtain fresh EC under the EIA Notification 2006 before initiating any construction activity as the validity of EC dated 17.05.2007 stands expired on 16.05.2017 as the Ministry has communicated to Project Authorities vide its corrigendum letter dated 27.09.2013, that EC is valid for a period of 10 years from the date of issuance of EC letter dated 17.05.2007 for commissioning of the project.

Further, it is absolutely pertinent to note that as per Para No. 8 of the EC dated 17.05.2007, the EC granted to the **'project proponent is valid for five (5) years for the commencement of construction work'**, which accordingly got expired on 16.05.2012. That after the expiry of the valid EC on 16.05.2012, the Superintending Engineer of Lower Penganga Irrigation Project vide letter dated 18.06.2012 applied to the MoEFCC for extension/corrigendum of the EC. That in response to which a Corrigendum dated 27.09.2013 was issued by the MoEF&CC thereby making an amendment with regard to the extension of the EC and the validity of the EC was thereafter extended for a period of 10 years from the date of the issue of the EC, therefore, the new expiry date of the EC was 16.05.2017. That considering the corrigendum, it was allowed to be extended till the year 2017:

As per Para-3 of the EC of even number dated 17.5.2007, the validity was mentioned as 5 years for commencement of

construction work. In this context, the following amendment in para-8 of the EC of even number dated 17.5.2007, is hereby made:

The environmental clearance is valid for a period of 10 years from the date of issue of this letter for "commissioning of the project"

Instead of

The environmental clearance is valid for a period of 5 years from the date of issue of this letter for "commencement of construction work"

It is crucial to note here that there is a specific modification in the phrases used in the corrigendum regarding the validity of EC i.e., the EC dated 17.05.2007 states that the same is valid for **"5 years for commencement of construction work"** whereas the corrigendum dated 27.09.2013 states that the EC is valid for **"10 years for commissioning of the project"**. However, till date the project proponent has only initiated 1% of construction work let alone commissioning of the project. It is to be noted that till date the project proponent is completely silent on this aspect and has never challenged it before any forum. That the Corrigendum clearly states that EC is valid for 10 years for commissioning of the project and since the project proponent has failed to commission the project with the stipulated timeframe of 10 years i.e., 16.05.2017. Thus, any further construction is legally not permissible till fresh EC is obtained in accordance with the EIA Notification, 2006. Hence, the E-Tender Notification No. 01 for 2023 dated 18.04.2023 is bad in law and is in complete violation of EIA Notification, 2006.

iii. The Applicant is misleading the Hon'ble Tribunal by referring to Manoj Kumar Mishra and Anr. vs. Union of India & Ors.:

The Respondent No. 3 in Para No. 4 of the affidavit dated 12.04.2024 has contended that the Applicant is misleading the Hon'ble Tribunal by referring to Manoj Kumar Mishra and Anr. vs. Union of India & Ors. The Applicants herein deny the contention in its entirety. The Applicants herein submit that it is pertinent to note that in the matter titled **Manoj Kumar Mishra and Anr. vs. Union of India and Ors. (O.A. No. 431 of 2015)** this Hon'ble Tribunal dealt with the issue of Lakhwar Vyasi Hydro Electric Project (HEP) which involves construction of 204 mt. high concrete dam with a 40 km long reservoir on river, Yamuna, wherein the construction work started in 1987 and continued till 1992. Thereafter construction work stopped. That this Hon'ble Tribunal vide order dated 10.01.2019 gave the specific directions:

*"It was brought to the notice of the EB that clearances to start work had been granted recently to the Lakhwar (300 MW) and Vyasi (120 MW) projects. This is in violation of the spirit of the Hon'ble Supreme Court's order of August 13, 2013. **It is also noticed that these projects were approved more than 25 years ago. Consequently they do not have any EIA/EMP/DMP studies that are mandatory today. Without conducting cumulative impact assessments and disaster management studies of the Yamuna and Kali basins no such projects should be allowed at the risk of fragile ecology, biodiversity and lives of people living in and around the project sites"**.*

9. After considering the pleadings and materials on record, we are of the considered opinion that the clarifications given by the Project Proponent, the report of the expert Committee and finding of various studies need to be looked

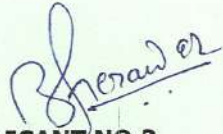
*into and studied by the EAC and **project needs to be reappraised in terms of EIA notification, 2006.***

10. We, therefore, direct the EAC to appraise the project afresh in terms of EIA Notification 2006 and impose additional general and specific conditions as may be considered necessary. EAC will be free to call for any reports which it may consider necessary. EAC is further directed to complete the appraisal by 15.04.2019. Till the project is reappraised status quo shall be maintained."


That the Applicants herein submit that in the present case, the EC was granted in 2007, i.e., 17 years ago. As the valid EC expired on 16.05.2017, hence, it is imperative to note that the project lacks mandatory EIA/EMP/DMP studies as on present date and thus without conducting any fresh cumulative impact assessments and disaster management studies such project will pose a significant threat to the fragile ecology, biodiversity, and the lives of individuals residing in and around the project sites. Thus, the Lower Penganga Irrigation Project Division is not legally entitled to commence the construction without obtaining a fresh EC as on present date, hence the E-Tender Notification No. 01 for 2023 dated 18.04.2023 is bad in law and is in complete violation of EIA Notification, 2006. Thus, issuance of the E-Tender notice for the commencing the construction activity is in complete violation of the EIA Notification 2006 as obtaining a fresh EC is a statutory mandate which cannot be overlooked.

4. In light of the above it is submitted that the Applicants have suitably made a case for grant of the prayers and reliefs sought for in the present Application and accordingly such prayers and reliefs may be granted by this Hon'ble Tribunal.

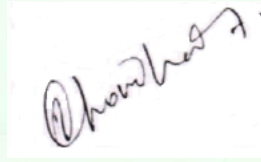
5) Pass any other order deemed fit by this Hon'ble Tribunal in the interest of justice, equity and good conscience.


APPLICANT NO.2

THROUGH



RITWICK DUTTA



RAHUL CHOUDHARY



KAUSTAV DHAR

COUNSEL FOR THE APPLICANTS

N-71, LOWER GROUND FLOOR,
GREATER KAILASH-I, NEW DELHI-110048
MOBILE NO: 9312407881
Email: litigation.life@gmail.com

Place: Pune/Delhi

Date: 14.08.2024

VERIFICATION

I, Balaji Anantrao Yerawar, aged about 68 years, S/o Late. Anantrao Nanaji Yerawar, R/o Rutuparn Dayariz, Plot No.6, Mahadev Nagar, Near Om Society, Yaavatmal, Maharashtra – 445001, do hereby verify that the contents of paragraphs 1 to 5 are true to the best of my knowledge and I have not suppressed any material fact.


APPLICANT NO.2

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
ORIGINAL APPLICATION NO. 109 OF 2023 (WZ)

IN THE MATTER OF:

PRALHAD TUKARAM GAWANDE AND ANR.

...APPLICANTS

VERSUS

STATE OF MAHARASHTRA AND ORS.

...RESPONDENTS

AFFIDAVIT

I, Balaji Anantrao Yerawar, aged about 68 years, S/o Late. Anantrao Nanaji Yerawar, R/o Rutuparn Dayariz, Plot No.6, Mahadev Nagar, Near Om Society, Yaavatmal, Maharashtra – 445001, do hereby solemnly affirm and state as under:

1. I am the Applicant No. 2 in the above titled Original Application and conversant with the facts and circumstances of the case and competent to swear this present Affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

Balaji Yerawar
DEPONENT

VERIFICATION

Verified at Yavatmal on this 16th day of August, 2024 that the contents of the above-mentioned Affidavit are true and correct and nothing material has been concealed therefrom.

N. N. O. 5087/2024.
Solemnly affirmed before me by
Shri. Balaji A. Yerawar
who is personally known to me
has been identified by Shri. Balaji DEPONENT
Advocate, whom
personally known
Dt. 16/8/2024
Narendra A. Salodkar
Advocate & Notary Public
At, Po. Dist. Yavatmal
Govt. of India Reg. No. 328
Pages. 1



**1021**

DC Law Chambers <dclaw160@gmail.com>

Copy of Rejoinder on behalf of the Applicant in OA No. 109 of 2023 Pralhad Tukaram Gawande & Anr. Vs. The State of Maharashtra & Ors.

1 message

DC Law Chambers <dclaw160@gmail.com>

Wed, Sep 4, 2024 at 11:06 AM

To: kaavya10jan@yahoo.com, cs@maharashtra.gov.in, secy-moef@nic.in, eelppd.yvtmalwrd@maharashtra.gov.in, seyic.yvtmalwrd@maharashtra.gov.in, Pushkal Mishra <pushkalm6@gmail.com>

Bcc: Kaustav Dhar <kaustav11feb@proton.me>

Dear All,

Please find attached-Copy of Rejoinder on behalf of the Applicant in OA No. 109 of 2023 Pralhad Tukaram Gawande & Anr. Vs. The State of Maharashtra & Ors.

Thanks & Regards

Counsel for the Applicant

**Rejoinder on behalf of the Applicant.pdf**

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