

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

ORIGINAL APPLICATION NO. 44 OF 2023

IN THE MATTER OF:

Aryavart Foundation

...Applicant

VERSUS

M/s Lote Parshuram Environment Protection Co-Operative Society Ltd. & Ors. ...Respondents

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Applicant

Through:



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PLACE: NEW DELHI

DATED: 13.02.2024

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**CONSOLIDATED/COMPREHENSIVE REJOINDER
AFFIDAVIT ON BEHALF OF THE APPLICANT**

I, Ashutosh Rameshbhai Mishra, S/o Dr. Rameshbhai Mishra, aged about 40 years, R/o Flat No. 103, 1st Floor, Green Valley Residence, Dindooli, Choryashi Taluk, Surat, presently at New Delhi, do hereby solemnly affirm and declare as under.

1. That I am the President of the Applicant Foundation in the captioned matter and therefore competent to affirm the present Affidavit.
2. That the instant Rejoinder Affidavit is being filed on behalf of the Applicant in response to the Joint Committee Report, and the Additional Affidavit filed by the Respondent No. 4/MIDC.

**REJOINDER/OBJECTIONS TO THE JOINT
COMMITTEE REPORT**

3. That at the very outset, it is pertinent to mention that during the Committee visit, the CETP was found in operation with primary, secondary and tertiary treatment with flow 2.8 -2.9

MLD respectively, against the 10 MLD design capacity which is less than even 30% of the capacity.

4. This suggests that the actual discharge of effluents could not be observed by the Committee thus hiding and obfuscating the actual scenario and leading to false results.
5. That infact, this has also been recognized by the Committee itself in Para 6.2.5 of the Report and the same is reproduced herein for the benefit of the Hon'ble Tribunal;

6.2.5 The inlet quality of the effluent is very lean during the committee visit and monitoring in the mid-May 2023 which might be due to controlled discharge from member industries, no discharges from potential industries, storage of effluent by the member industries, non-operation of some industries etc.

6. That this aspect must be appreciated by the Hon'ble Tribunal while arriving at a final decision and a surprise inspection may be directed to better ascertain the actual scenario.
7. That another shocking aspect which emanates from the Report of the Joint Committee is that despite the functioning of the CETP at a highly reduced capacity even then Cyanide was found to exceed the discharge standards prescribed by the MPCB (Para 6.2.3). Needless to say, Cyanide is one of the most toxic and dangerous compounds in the world and its excess can wreak havoc on the environment. further, if the CEPT was functioning at full capacity, the amount of Cyanide would definitely reach proportions where it will be irreversibly detrimental to human, animal and plant life.

8. That another important observation of the Committee at Para 6.2.4 is reproduced hereinbelow;

*... It is informed that CETP is design for BOD: 1200 mg/l and COD: 2500 mg/l, considering reduction 70-75% as above, CETP may be able to reduce BOD & COD up to 300- 360 mg/l & 625- 750 mg/l **which will not meet with the discharge standards.***

Therefore, there is need to operate the treatment units efficiently, control the inlet quality of effluent coming from member industries, revise the inlet norms based on the feasibility & treatability, install advance chemical treatment etc.

(emphasis supplied)

9. Further as per the data mentioned in the Report, 85% of member industries of the CETP are categorized as Red category which inherently have higher polluting capacity. That this aspect also needs to be appreciated by the Hon'ble Tribunal while arriving at a final decision regarding the Environmental Compensation to be paid.
10. That by way of MIDC's Additional Affidavit, list of non-conforming Industries has been provided. The Hon'ble NGT may direct that an exercise be carried out to fix responsibility and improve the functioning of the CETP.
11. That further, the finding of the Report that Cyanide was exceeding the parameters suggest that the CETP was non-conforming even on the date of the visit and may be non-conforming even today.

**REJOINDER TO THE ADDITIONAL AFFIDAVIT FILED
BY RESPONDENT NO. 4/MIDC**

12. That vide order dated 06.03.2017, the MPCB issued directions u/s 33A of the Water (Prevention & Control of Pollution) Act, 1974 to the MIDC directing MIDC to take over Lote Parshuram CETP since it was a non-conforming CETP. Section 33A of the Water (Prevention & Control of Pollution) Act, 1974 is reproduced herein for the benefit of the Hon'ble Tribunal;

33A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

- (a) the closure, prohibition or regulation of any industry, operation or process; or*
- (b) the stoppage or regulation of supply of electricity, water or any other service.]*

13. That once such direction is issued, MIDC is bound to comply with the same and now cannot shirk responsibility. That once MIDC has taken over the CETP and it being the de facto operator, it cannot now say that they do not have the capacity or expertise to run the CETP. Infact, such a

submission from an instrumentality of the State is shocking to say the least.

14. That further, MIDC has appointed one M/s Aquachem Enviro Engineers Pvt. Ltd. for the maintenance and operation of the CETP. That therefore, it is for the MIDC and the present operator to oversee functioning of CETP within the applicable parameters and to take action against erring members in case they are not meeting the applicable standards.
15. That while it is not disputed that MIDC may not be the actual polluter, but it is responsible for its functioning of the CETP and therefore it was incumbent upon them to take requisite action suo-moto or involve and work with MPCB in tandem to ensure the CETP was not polluting.
16. That even after MIDC has taken over the functioning, various Reports have pointed out non-conformity with the applicable discharge standards, thus MIDC had knowledge that the CETP was not meeting the required norms and failed to take any action whatsoever, including informing MPCB or writing to the erring industries.
17. Further, from MIDC's Additional Affidavit, it appears that M/s Aquachem was informing MIDC of the erring industries but what action was taken against the industries is not known and must be disclosed. If the MIDC also turned a blind eye despite knowing the erring industries, then they must be held responsible for the lapse and adequately penalized.

18. That further, the MIDC seems to be under the misconception that the period of non-compliance has been taken from April 2018 to December 2023, however the actual period considered by the Committee is April 2018 to April 2023, thus being a five year period and not six as contended by MIDC.
19. Since MIDC took over the CETP in 2017 itself, therefore excluding the period of 2018 cannot be done and MIDC cannot absolve itself of its responsibilities.
20. That further, reliance on Paras 7.6 and 7.7 of the Report to say that there wasn't any environmental damage is plainly erroneous to say the least. That the findings in Paras 7.6 and 7.7 only refer to the situation on date of the visit and not a comprehensive finding. Infact, MIDC's Affidavit fails to even advert to the facts that the CETP was being operated at a reduced capacity and even then Cyanide was found to be exceeding the parameters set by MPCB.
21. That it is also apposite to mention that MIDC's Affidavit also fails to advert to the finding that the CETP is designed for BOD: 1200 mg/l and COD: 2500 mg/l and considering reduction of 70-75%, the CETP may be able to reduce BOD & COD up to 300- 360 mg/l & 625- 750 mg/l which will not meet with the discharge standards. That this seems to suggest that even as on date, the CETP is non-conforming.
22. Once the MIDC consented to taking over the CETP, it cannot back away from the attendant responsibilities on the pretext of ignorance, subsequent improved performance etc.

23. That the submissions regarding taking EC Factor as Rs. 500/- instead of Rs. 250/- cannot be faulted with as the same has been duly explained by the Committee since majority of industries are in 'Red' category, CETP itself is 'Red' category, and almost continuous non-compliance of consented parameters i.e. discharge standards for more than five years therefore, instead of R-250 which may be normal factor, present situation requires the factor to be higher. Further, the MIDC cannot sit in judgment of Expert Committee in matters it itself says it has no expertise in.

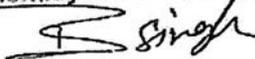
24. That, therefore, the MIDC has the responsibility to pay the Environmental Compensation which it may later recoup from the erring members or the current operator i.e. M/s Aquachem.

25. That therefore, this Hon'ble Tribunal may kindly be pleased to reject the objections of the MIDC to the Joint Committee Report.



DEPONENT

Solemnly Affirmed Sworn Before me



Notary Public New Delhi India

VERIFICATION

Verified at New Delhi on this 13 FEB 2024 day of February 2024 that the contents of the Affidavit are true and correct to the best of my knowledge and belief and no part of this Affidavit is false and nothing material has been concealed therefrom.

BOOK NO
PAGE NO
SERIAL NO. 545/2024



TESTED

BALJIT SINGH
NOTARY DELHI-R-10615
Govt. of India
NEW DELHI



DEPONENT



Surender Singh Hooda <sshoda65@gmail.com>

Original Application No.44 of 2023 - Aryavart Foundation vs M/s. Lote Parshuram Co-Op Society Ltd. & Ors.

Surender Singh Hooda <sshoda65@gmail.com>

Tue, Feb 20, 2024 at 11:19 PM

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Dear Ma'am/Sir,

Please find attached Objections/Rejoinder on behalf of the Applicant to the Joint Committee Report and the Addl. Affidavit of R-4/MIDC.

Warm Regards,

Dr. S.S.Hooda

Ph.D in Law

Advocate On Record

Supreme Court Of India

B-40,L.G.F, NDSE-II, 49

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