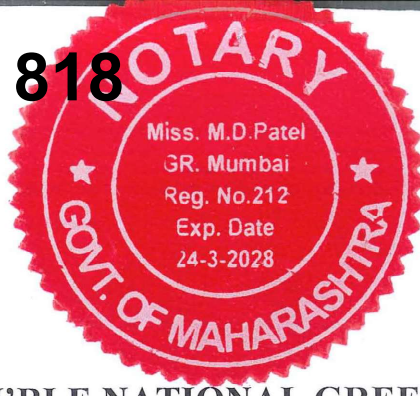


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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,**

**WESTERN ZONE BENCH, PUNE**

**I.A. No. 251 / 2024**

**IN**

**ORIGINAL APPLICATION NO. 77 / 2023**

Banda Nagaraj Kumar & Anr. ....Applicants

v/s

Maharashtra Maritime Board & Ors. ....Respondents

**REPLY AFFIDAVIT BY RESPONDENT NO. 2,  
MAHARASHTRA COASTAL ZONE MANAGEMENT  
AUTHORITY**

I, Vishal Vishwas Madane, Under Secretary & Sci II, Environment & Climate Change Department, Government of Maharashtra do hereby state on solemn affirmation as under –

I am well conversant with the facts of the present case and I am competent to swear this Affidavit based upon the records available with this office.

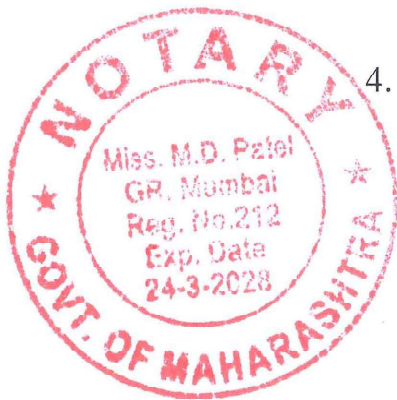
1. The present application pertains to the alleged illegal construction work of anti--sea erosion measures, done by

*M.D. Patel*

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Respondent no. 1, Maharashtra Maritime Board, in the CRZ I lands on Aksa Beach, Madh Island, Malad, Mumbai Suburban. A detailed reply affidavit to the main original application has already been filed on behalf of MCZMA.

2. By filing the present IA for amendment, the applicant is trying to change the nature and scope of the original application which cannot be allowed under any circumstances. All the pleadings in the proposed amendment as mentioned in the Annexure – 1 – Schedule of Amendment to the present IA, challenges the procedure of modification of the condition as granted by the MCZMA decision dated 5<sup>th</sup> February, 2024.
3. I would like to demonstrate, by giving the chronology of the events, as to how the Applicant is playing mischief and taking undue advantage of the legal procedure to satisfy his vested interests.
4. The original application was filed on 10<sup>th</sup> May, 2023 and after that multiple dates have taken place. The Hon'ble Tribunal heard the original application at length and passed a detailed order dated 1<sup>st</sup> December, 2023, wherein it observed



...  
 11. *We are of the view that whether this condition needs to be deleted from the CRZ clearance or not, a decision has to be taken by the MCZMA at their end, which is pending for a long time. Therefore, we direct the MCZMA to decide this*

M. D. Patel

*[Handwritten signature]*

*matter within a period of one month positively. This matter cannot be kept open ended for indefinite period. The respondent No.1 shall also provide whatever kind of study it wants to place before the MCZMA within a period of 20 days from today and within a week thereafter, the MCZMA shall file reply affidavit and a copy of the same shall also be served upon all other parties, who may file rejoinder affidavit against the same, if any, within one week thereafter.*

...

5. Subsequent to passing of the above direction, MMB engaged the expert services of IIT, Mumbai who have submitted a report titled Shoreline Studies to Ascertain the Coastal Erosion For Aksa Beach, Mumbai, Maharashtra, dated 21<sup>st</sup> December, 2023.
6. The said report was considered by the MCZMA in their meeting dated 5<sup>th</sup> February, 2024, pursuant to the directions of the Hon'ble Tribunal dated 1<sup>st</sup> December 2023. MCZMA observed the following –

...

- *Taking into account the above said reports, due to site constraints and electric pole present near the site and need to protect the infrastructure adjoining the beach, the Authority is of the the view that above said condition stipulated in earlier MCZMA recommendation requires modification.*

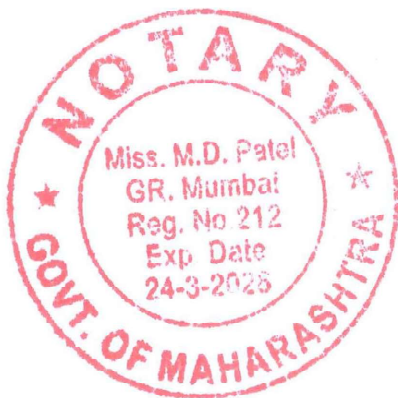
*M. D. Patel*



*[Handwritten signature]*

- *It was further deliberated that before construction, MMB was required to put a request to MCZMA informing the Non Feasibility to construct the seawall on landward side of the HTL, due to constrains of the site conditions and hence, requires deletion / amendment. Now, it came to the notice of the Authority from the representation of MMB and various report of IIT & CWPRS called by the Authority; that there are constraints and seawall could not be restricted on landward side of HTL. After detailed deliberation and considering various reports, the Authority opines that above said condition requires amendment.*
- *The Authority deliberated that construction of seawall to occupy certain area of beach for construction, however, seawall is necessary in order to protect the considerable area of beach.*
- *The Authority after detailed deliberation felt that the project of anti sea erosion measure implemented by the MMB is vital public interest project with an objective to protect the coastline from eroding and for protection of infrastructure /properties present near the beach.*
- *In view of above, the Authority observed that the above said condition mentioned in earlier MCZMA recommendation could not be deleted entirely as per*

*M. D. Patel*



*Dr.*

*request of the MMB. However, the Authority is of the view that the above said conditions needs modification.*

7. In the light of above, the Authority after deliberation decided recommend the proposal to SEIAA for modification of the specific condition no. (I) as follows:

*“MMB to ensure that Anti Sea Erosion bund shall occupy minimum intertidal area which is necessary”*

8. The above decision was taken on 5<sup>th</sup> February, 2024. After that, 4 effective hearings have taken place, wherein not once the applicant sought to challenge the MCZMA decision dated 5<sup>th</sup> February, 2024. The present application has been filed on 30<sup>th</sup> August, 2024, which is almost 6 months after the MCZMA taking the decision. When the present case has reached its fag end of final hearing, the applicant wants to seek amendment based on the decision of the MCZMA.

9. For challenging the alleged procedural ultra vires of the decision dated 5<sup>th</sup> February, 2024, the applicant should have filed a separate appeal. On 01-12-2023, when the original application was heard and a detailed order was passed by this Hon'ble Tribunal, the Applicant themselves have admitted that, it has come to their knowledge in October 2023, the Maharashtra Maritime Board (MMB)/respondent No.1 had addressed a letter dated 28.06.2023 to the Maharashtra Coastal Zone Management Authority/respondent No.2 seeking deletion of the specific condition No. I in CRZ clearance dated 05.03.2019 granted by the SEIAA.



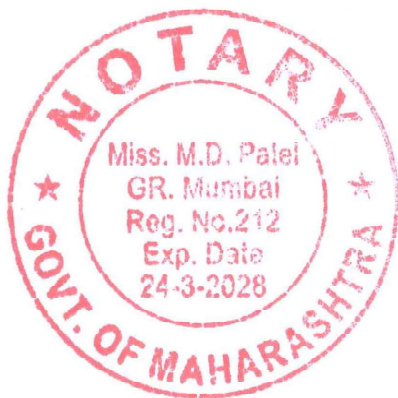
M. D. Patel

*(Signature)*

10. Vide the order dated 01-12-2023, as per para no. 11, the Hon'ble Tribunal had directed the MCZMA to decide on the application of the MMB regarding deletion of the condition, within one month. MMB was also directed to provide their study to the MCZMA within a period of 20 days from 01-12-2023 and within a week thereafter, the MCZMA was directed to file their reply affidavit. So the decision taken by the MCZMA is as per the directions of the Hon'ble Tribunal and therefore it is wrong to say that the MCZMA took the decision during pendency of the present application and granted an alleged ex – post facto clearance.

11. The order dated 01-12-2023 was passed by this Hon'ble Tribunal in the presence of the Applicant. The Applicant was aware that the issue is under consideration of MCZMA and before the next scheduled date of court hearing which was 23-02-2024, MCZMA was bound to take a decision in compliance of the Hon'ble Tribunal's directions and accordingly file a reply in the original application, which it promptly did on 22-02-2024 by filing their reply. The said reply contained the decision dated 5<sup>th</sup> February, 2024 taken by the MCZMA, and accordingly it was communicated to all the parties including the Applicant.

M. D. Patel



D. S.

12. All this time the Applicant chose to sit idle and not challenge the MCZMA decision dated 5<sup>th</sup> February, 2024 by filing an appropriate proceeding.

13. Moreover, the prayer clause (e1) in the proposed amendment praying for a direction to MCZMA to revoke the post – facto clearance dated 05<sup>th</sup> February, 2024 cannot be allowed in an original application because for praying such relief only an appeal can be filed. Rather than filing of an appeal, the applicant is seeking a back door entry by circumventing the limitation provision of sec. 16 of the NGT Act and thereby is seeking to modify the original application, which cannot be allowed.

14. Therefore, it seems, that just to prolong this litigation as the stay order granted by this Hon'ble Tribunal vide order dated 01-12-2023 is running in favour of the Applicant, without filing an appeal, this IA for amendment has been filed. The Applicant through his counsels has filed multiple cases in this Hon'ble Tribunal against various causes and therefore he is well aware about the practice and procedure of this Hon'ble Tribunal, therefore he could have preferred an appeal against the MCZMA decision dated 5<sup>th</sup> February, 2024, which he clearly let it forego. And, to overcome the difficulty of limitation for filing an appeal, he has chosen to file the present IA for amendment.

15. From the above conduct of the applicant, it is crystal clear, that the present applicant is an obstructionist who is challenging a project which is important for general public

M. D. Patel





purpose. The Applicant knows that the relief sought by way of the proposed amendment cannot be granted by this Hon'ble Tribunal, yet he has chosen to pursue it because it is delaying the adjudication of the original application.

16. In light of the above detailed submissions, the MCZMA vehemently objects to allowing the proposed amendment. Instead the IA should be rejected in its entirety by imposing a cost of Rs. 50,000/- on the Applicant and he be directed to argue the original application finally without any further delay.

17. In light of the above averments, this respondent craves leave to file any additional reply as and when required. It is respectfully prayed that MCZMA shall abide by any orders and directions issued by the Hon'ble Tribunal.

Whatever is stated above is true and correct to the best of my knowledge, ability and belief and I affirm it to be true.

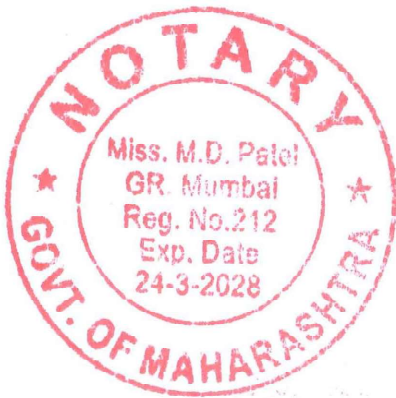
Place: Mumbai

(Vishal Vishwas Madane)

Deponent

Under Secretary & Sci II,

Env&CC Department, GoM



Date: 12/9/24

M.D. Patel

### VERIFICATION

I, Vishal Vishwas Madane, Age 40 years, Under Secretary & Sci II, Env&CC Department, GoM, having my office address at 15<sup>th</sup> Floor, New Administrative Building, Mantralaya Mumbai, do hereby verify & declare that statements made in the aforesaid Paras are true and correct to the best of my knowledge and information and I believe the same to be true and that nothing material has been concealed therefrom.

Verified at Mumbai on this <sup>12<sup>th</sup></sup> day of September, 2024

(M)

*Vishal Vishwas Madane*

(Vishal Vishwas Madane)

Director, Environment &CC

and MS, MCZMA

Deponent

Identified by

*Shirke A.B.*

Archana Anish Parshurame  
SC-II & Under Secretary.

**BEFORE ME**

M. D. Patel

12-9-2024

Sr. No. 451

Blk. No. 3

**MISS M. D. PATEL**

**ADVOCATE & NOTARY**

Kohiar House,

4, Dhuswadi, Dhobitalao,

MUMBAI - 400 002.

