

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

Original Application No.59/2023 (WZ)

Earlier O.A. No.589/2022(PB) LP

Brahmanand Tiwari

.....Applicant

*Versus*

State of Maharashtra & Ors.

....Respondent(s)

**REPLY CUM STATEMENT OF OBJECTIONS FILED BY THE APPLICANT TO THE  
FINAL REPORT SUBMITTED BY THE JOINT COMMITTEE**

The Applicant, Mr. Brahmanand Tiwari, Editor-In-Chief of BT News Broadcasting, Mumbai, representing a cross section of the press and broadcast media, humbly submits as under:

1. That the above Original Application has been filed by the Applicant broadly regarding environmental concerns and thereby impacts on people's health and

- quality of life in Taloja, Navi Mumbai, Maharashtra and request to take all necessary actions against DFPCL (“DFPCL”) and its subsidiary M/s STL (“STL”). That the Applicant urges the Hon’ble to impose heavy penalties against Maharashtra Pollution Control Board (“MPCB”) for not taking actions against DFPCL and its subsidiary STL.
2. That the industrial plants of DFPCL are responsible for committing/creating serious pollution of water and air in the residential area, infringing on the right to life of the people of the locality, and running industries in violation of the Environment Protection Act, 1986.
  3. That it is also the further case of Applicant that the MPCB is not taking any statutory actions and are allowing these illegalities to continue with blind eyes.
  4. That MPCB, who said to have conducted the enquiry in pursuance of order of this Hon’ble Tribunal is attempting to safeguard and protect the illegalities of the DCPCL. That MPCB is also attempting to deviate the issue for the best reason known to them.
  5. That, in compliance with the aforesaid order dated 16/09/2022 of the Hon'ble National Green Tribunal, a Joint Committee was constituted by the nodal agency MPCB vide order number MPCB/RO(BMW)B-221121-FIS-0021, Dated 21/11/2022 comprising of the following officials:
    - a) E. Thirunavukkarasu, Scientist 'E' Integrated Regional office, MoEF&CC, Nagpur.
    - b) Nischal C., Scientist 'D' CPCB Regional Directorate Pune.
    - c) K.B Gawade, Deputy Muncipal Comissioner, Representative of Muncipal Comissioner Panvel.
    - d) D.B Patil, Regional officer, MPCB Regional office, Navi Mumbai.

e) Sachin Adkar, (Sub Regional officer) MPCB, Navi Mumbai.

f) Vijay Talekar, Tahsildar, Panvel, Representative of District Collector Raigad.

Serial no. c), d), e), and f) of the Committee Members are unethical, corrupt, indolent, and dealers in the death of innocent citizens. All of them are under departmental investigation for disproportionate assets. They tamper with government documents and are involved in fraudulent practices, bribery, lobbying, extortion, cronyism, nepotism, parochialism, patronage, facilitation of criminal enterprise, criminal breach of trust, and suppression of evidence. These are all part of their working style. They are enemies of mankind and are moving forward to destroy the sovereignty and integrity of the nation while doing government service. The Applicant has also filed his complaint with the Central Bureau of Investigation and the Anti-Corruption Bureau. In addition, officials of MPCB have been coaxed and bribed by other four officials to sign the Joint Committee report. That this Joint Committee report is false, frivolous, and incorrect, with no evidence available. That the impartiality and neutrality of the various members of this Joint Committee is highly questionable.

6. That the Applicant filed various complaints with the MPCB and CPCB more than 20 times through various notices and letters running into thousands of pages, which were ignored, and no decisive action was taken. To save the lives of lakhs of innocent citizens, the Applicant filed this complaint with this Hon'ble Tribunal. That the Applicant was a part of this committee and needed to be associated at the time of inspection. However, the Applicant was not taken along during any investigation, any observation, or any necessary action, nor was the Applicant given any information. All this was done secretly, keeping the Applicant in the dark. That the members of this Joint Committee are superficial, and their main business is to

extort money by threatening the industries on the basis of the complainant's complaint

7. That even though the Joint Committee sought enough time in the above proceedings to submit the final report and said to look into the “*grievances of the applicant, associate the applicant and representative of the concerned project proponents, verify the factual position and submit its report.*” It is interesting to note that even though the first meeting was held on 24/11/2022 at the Office of the Regional Office of MPCB, Navi Mumbai, and subsequent joint inspections and monitoring were carried out on 07/12/2022 and 08/12/2022, the applicant was not even informed of the joint inspections and monitoring that were carried out on 07/12/2022 and 08/12/2022 and was kept in the dark about the whole process. The MPCB was requested to issue prior notice/intimation to the Applicant to associate with the joint committee during the site inspection and provide representation if any; however, this was conveniently ignored by the MPCB as the Applicant was never informed about the site inspection.
8. That it is submitted that the Applicant was not involved in the joint inspection conducted by the Joint Committee, even though the Joint Committee were required to notify the Applicant about the inspection. That the Applicant received no prior notice of the inspection, and was not present when it was conducted. This is unfair and biased towards the Applicant. That it is submitted that the Applicant was not involved in the joint inspection conducted by the Joint Committee, even though the Joint Committee were required to notify the Applicant about the inspection. That the Applicant received no prior notice of the inspection, and was not present when it was conducted. This is unfair and biased towards the Applicant.

9. That the Joint Committee had to associate the Applicant during its inspection and had to notify the applicant about the joint inspection. That MPCB's failure to notify the Applicant about the joint inspection deprived the Applicant of the opportunity to be present and to participate in the inspection. That the Applicant's absence from the joint inspection has further prejudiced the applicant's interests. The respondents may have made findings or recommendations in the joint inspection report that are adverse to the applicant's interests. That, during the inspection, Applicant has not had an opportunity to challenge these findings or recommendations.
10. That the Joint Committee's failure to notify the Applicant about the joint inspection is also a breach of the principles of natural justice. The principles of natural justice require that a person be given an opportunity to be heard before any decision is made that affects their interests. That the Applicant has not been given an opportunity to be heard in this case.
11. That this is unfair and biased towards the Applicant, and it appears that the Joint Committee deliberately omitted to involve the Applicant so that they could make the report in whatever way they wished to do so. That it appears that the Joint Committee deliberately omitted the Applicant from the joint inspection so that it could make the report in whatever way it wished to do so.
12. That the Joint Committee knew that the Applicant was a party to the proceedings, and it knew that the Applicant had a direct interest in the outcome of the inspection. Nevertheless, the Joint Committee chose to omit the Applicant from the inspection. This suggests that the Joint Committee was biased against the Applicant and that it intended to make a report that was unfavourable to the Applicant.
13. That the Joint Committee's failure to notify the Applicant of the joint inspection is a violation of the applicant's right to due process of law. That the Applicant has a

right to be present and to participate in any inspection that is conducted with respect to the present case.

14. The Applicant would like to object to Page 3, Point No. 6.0 of the Report of the Joint Committee. Instead of preparing an investigation report, the Joint Committee took money from the company and did the work of making the company's marketing plan and portfolio, for which these six members of the Joint Committee were not appointed. Based on the Applicant's deep research and investigation, the Applicant is placing a detailed report before you in the hope that you will take cognizance of it and take remedial action against DFPCL so that the people of Navi Mumbai can breathe easy from the noxious and poisonous pollutants released into the air every day across Talaja MIDC, Kharghar, Roadpali, and Panvel. Environmental concerns have grown over the years, with much larger impacts on people's health and quality of life. The situation has now become very pathetic in Talaja and surrounding areas, with people becoming cancer patients due to poisonous gases and dying across neighbouring towns. The number of "silent" deaths caused by environmental pollution exceeds any other widely recognized risk factor. Each and every second, toxic chemicals are released into the air by DFPCL plot Boiler D Nos. K-1 Part -1, K-2, K-3, K-4, K-5, and K-6 MIDC Talaja a, Talaja, Panvel, District Raigad. STL plot nos. K-1 (Part-1) and K-1 (Part-2) MIDC Talaja, Panvel, District Raigad. STL Plot nos. K-7 and K-8 MIDC Talaja, Panvel, District Raigad.
15. That DFPCL have not been adhering to pollution prevention norms, they are not following rules as per environmental laws and they are least bothered about the severely health repercussion caused by them, Talaja and all parts of Navi Mumbai from severe particulate pollution and other pollutants like oxides of nitrogen and air

- toxics. That DFPCL is cultivating death for their personal profit and to bring profit to all their shareholders while forgetting their social responsibility that binds them to the society around them.
16. That DFPCL is a manufacturer of Nitric Acid, Iso Propyl Alcohol (IPA), food grade Liquid Carbon Dioxide and Methanol. That DFPCL comes under the 'red' category, which means that this company has the highest potential of harmful pollution. That DFPCL has high chemical oxygen demand. That they have previously received a notice from MPCB to its manufacturing unit located at MIDC Talaja, Dist. Raigad. That the residents have been complaining of strong chemical odour from these illegally manufacturing units. That the residents have complained that the cases of bronchitis and respiratory disorders are on the rise. That the Deepak Fertilizer is the main source of ammonia which facilitates and manufacture nitrogen-based fertilizers which accounts for 43% , Methanol 10% and Sulfuric acid 66% released to air during our investigations. That Applicant's investigative team started getting reports of these dealers of death, where every hour one person dies due to air pollution. That, in DFPCL, many of their workers died due to asphyxiation. That the National Disaster Management Authority (NDMA), the primary responsibility to deal with chemical accident, kept silence on these matters and did nothing for the interests of the employees.
17. That the Applicant would like to object to Page 6, Point No. 7.0 of the Report of Joint Committee. That the Joint Committee Report is completely misleading, improper and incorrect. That the Applicant has measured the concerns of residents near the DFPCL plant in Talaja MIDC, Navi Mumbai, about environmental health issues. The Applicant visited them to understand patterns of concern and changes in concern after an industrial accident, as well as the individual and contextual

factors associated with those patterns. The Applicant also visited Gram Sabhas (village councils) near Talaja MIDC to get clarity and more information regarding this. There is a very scary situation in the village and people are angry after losing their family members as they are dying prematurely due to poisonous winds. That DFPCL has created terrible and inhumane distress to all residents of Talaja , Navi Mumbai.

18. That though a profusion of laws exist to protect workers in India, few are enforced, inspections are rare, and MPCB officials are easily compromised. That the Applicant have personally informed many senior officers of DFPCL and the MD of the company about the public problems through notices, yet the company and its shareholders continue to poison the common citizens slowly to earn their personal benefits, an impartial person if sent to the site, he can see with his's own eyes that tons of poisonous contaminated smoke spewing from the chimneys, even an ordinary person will be intoxicated by the aroma and will become unconscious within a few hours. That in India, owners often escape sanction and our Criminal Justice System is slow, and scarce police resources are unlikely to be focused on the investigation of industrial accidents.
19. That pursuing multinationals or owner is expensive, complicated, time-consuming, and fraught with uncertainty. That the process of emission monitoring of operational stacks/vents for the specified consented parameters; effluent monitoring of ETP; compliance verification of conditions under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016; environmental compliance clearance conditions; comparison and analysis of installed CAAQMS and OCEMS effluent and emission data of the last three months; and health records of employees and comparison of monitoring of emission and effluent data, executed

through MoEF&CC/NABL, are **false, fake, and misleading**. That the Joint Committee has just coined all these words, and no member of the committee noticed the inconsistencies. That the amount of four crore rupees has been given as a bribe to prepare such a report, which is false, fake, and misleading to the court. That the local people of Taloja, Navi Mumbai are hearing that the accredited lab is following the instructions of the members of the Joint Committee. There are many mistakes in the certificate. That the Experimental laboratory data or empirical estimation methods are extrapolated to real situations that are not realistic and scientific. What are the sources and quantities of emissions? The answer requires thorough knowledge of the production and use of the considered chemical compounds, including an assessment of how much of the chemical is wasted in the environment by production and use. The chemical may also be a waste product, which makes it very difficult to determine the amounts involved; for instance, the very toxic dioxins are waste products from incineration of organic waste.

Laboratory experiments are often conducted under highly controlled conditions that are not representative of the real world. For example, a laboratory experiment on the toxicity of a chemical might be conducted using a single dose of the chemical administered to a small number of animals. However, in the real world, people are exposed to chemicals in a variety of ways, including through multiple exposures to low doses. Chemicals can interact with each other and with other environmental factors in complex ways that are not always well understood. For example, a chemical that is not toxic on its own may become toxic when it is combined with another chemical. However, laboratory experiments often do not consider these complex interactions. Laboratory experiments are typically conducted on a small scale. However, when the results of these experiments are scaled up to real-world

- applications, there can be unexpected results. For example, a laboratory experiment might show that a chemical is effective at killing pests. However, when the chemical is used on a large scale, it may also kill beneficial insects and pollute the environment.
20. That the Joint Committee members have directly done the work of throwing dust in the eyes of this Hon'ble Tribunal and the suffering citizens through this Joint Committee Report. That due to such irresponsible officials, thousands of people have lost their lives in the past, most recently in Visakhapatnam and 1984 Bhopal, disaster, widely considered the world's worst industrial disaster, the committee members learned nothing from the Bhopal gas tragedy. In Bhopal, 4,000 people died within days of the toxic gas leak from a pesticide plant, and thousands more in the following years. That many serious hazards are now associated with DFPCL. That the local MLA has also stated the danger posed by DFPCL, many public representatives have agitated from time to time. There is a need of gathering data on the types of hazards such as possible environmental damage and harmful effect on human health. This can have detrimental effect on health and can include congenital, neurological, mutagenic, endocrine disruption and carcinogenic effects. It may also include characterization of the behaviour of the chemical within the body (interactions with organs, cells, or genetic material), environmental damage including lethal effects and sub-lethal effects on growth and reproduction.
21. That the Applicant would like to object to Page 12, Point No. 7.2.2 (Analysis of Ambient Air Quality Monitoring Conducted by MOEF&CC Approved Laboratory) of the Report of Joint Committee. That the toxic air pollutants of greatest concern are those that cause serious health problems or affect many people. Health problems include cancer, lung damage, respiratory irritation, nervous system problems, and

birth defects. Other health problems may not appear until many months or years after a person's first exposure to the toxic air pollutant. Cancer is one example of a delayed health problem. That DFPCL has so far affected the lives of thousands of residents of Taloja and many nearby areas, many are suffering from incurable diseases and many have lost their lives. That three of DFPCL's Continuous Ambient Air Quality Monitoring Stations (CAAQMS) do not work properly. Further it is not a reliable method, three CAAQMS are located near main plant gate (nearby methanol plant), near ETP plant (nearby to WNA-4 plant) and near NPK plant. All three of Continuous Ambient Air Quality Monitoring Stations (CAAQMS) are located within the M/s DFPCL & M/s STL K1 premises. That the authenticity of CAAQMS cannot be considered true as impartiality and neutrality of this Joint Committee is highly questionable. The Joint Committee Report is not authentic as the measuring of pollution was done by defective CAAQMS. In this case, DFPCL could easily have tampered with the pollution measuring instruments to make it appear that its emissions were lower than they actually were. This would have allowed the company to avoid paying fines or taking other corrective action. Further, this is a major conflict of interest, as DFPCL has a clear incentive to tamper with the results in order to avoid being held accountable for its pollution. It is well-known that companies often try to cheat on environmental regulations in order to save money.

Even if the Accused company did not deliberately tamper with the instruments, there is still a high risk that the results would be inaccurate. This is because the company's various CAAQMS are likely to be calibrated in a way that is favourable to the company. For example, the pollution emission measuring instruments may be set to measure pollution at less sensitive levels than they should be.

As a result of these concerns, the Joint Committee Report cannot be considered to be a reliable source of information about DFPCL's pollution levels. The report's findings should not be used to make any decisions about the DFPCL's future, such as whether or not to grant it a permit to continue operating. That the Joint Committee collected the CAAQMS data of all of the three aforementioned stations for period of September 2022 to November 2022 is false, misleading and fake as people accompanying in inspection were sold for money. That the analysis of the CAAQMS data of three aforementioned stations is depicted in the table 4, 5 & 6 of the Joint Committee Report is false, misleading and fake with actual no evidence. That the risk assessment for toxic air pollutants, as per US Environment Protection Agency, is a four-step process: (1) hazard identification, (2) exposure assessment, (3) dose-response assessment, and (4) risk characterization. It is a widely accepted method to assess the risk of toxic air pollutants. However, the Joint Committee did not adopt this correct scientific and widely accepted method of assessment which is why Applicant humbly submits that the entire report is artificial, false and fake.

22. That Applicant urges the Hon'ble Tribunal to note that Joint Committee did not adopt the correct and scientific method of assessment because the entire report is misleading, false and incorrect. That it should also be coupled with the fact that the Applicant's exclusion from the joint inspection was unfair and biased. That it was a violation of the applicant's right to due process of law, and was designed to deprive the Applicant of his right to be heard and to have his interests represented. That the Applicant respectfully requests that the Hon'ble Tribunal to set aside the Joint Committee's report and order a new inspection that includes the Applicant.
23. In view of all these discrepancies. Applicant humbly requests the Hon'ble Tribunal to include Chief Secretary of Maharashtra, Secretary: Ministry of Environment,

Forest and Climate Change (Delhi), Chairman of MPCB, Member Secretary CPCB, District collector Raigad and 2 other experts in the committee.

24. That the Applicant humbly requests the Hon'ble Tribunal to ask the following required documents from the Respondents:

- 1) A copy of environmental clearance of DFPCL, list of documents along with copies submitted by Deepak Fertilizer to get this clearance.
- 2) Copy of Consent order with Date.
- 3) Copy of internal test report.
- 4) Copy of the prohibitory order issued by Govt of Maharashtra to Deepak Fertilisers And Petrochemicals Corporation Limited.
- 5) Copy of Show cause notice issued by MPCB to Deepak Fertilisers And Petrochemicals Corporation Limited.
- 6) Copy of the permission granted for any relaxation for manufacturing for Deepak Fertilisers And Petrochemicals Corporation Limited.
- 7) Status of environmental clearance and consent for operation.
- 8) Process Description in details.

25. That having a valid consent from MPCB under Water and Air (Preservation and Control of Pollution) Act, does not necessarily mean that there is no emission of pollution by DFPCL. That the Applicant approached this Hon'ble Tribunal since there was inaction on the part of statutory bodies in preventing all sorts of pollution. That the Applicant submits that the level of pollution in nearby water bodies is unbearable and can be seen as well as felt through our eyes. That the citizens of nearby areas face this high level of pollutions and have to live with it because the statutory bodies are not doing their jobs and constantly endangering the previous lives of the citizens.

26. That the Applicant humbly requests the Hon'ble Tribunal to kindly consider the above facts and pass appropriate orders.

AND FOR THIS ACT OF KINDNESS THE APPLICANT, AS IN DUTY BOUND,  
SHALL EVER PRAY.



Mumbai

APPLICANT

Date: 26/010/2023

Brahmanand Tiwari