IN THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. NO. 248/2023

IN THE MATTER OF:

Varun Gulati ... Applicant

Versus

State of UP & Ors. ... Respondents

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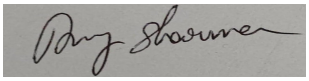


At: New Delhi
Dated:9.2.2024

Anuj Kumar Sharma
ADVOCATE
8076629401

IN THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
O.A. NO. 248/2023

IN THE MATTER OF:

Varun Gulati ... Applicant

Versus

State of UP & Ors. ... Respondents

REPLY ON BEHALF OF THE RESPONDENT NO. 7/ LAKSHYA ENTERPRISES

MOST RESPECTFULLY SUBMITTED:

PRELIMINARY OBJECTIONS

1. That the answering respondent is a Citizen of India, and is running a business of 'Dyeing & Washing of Jeans', in a lawful manner and by observing all precautions envisaged by law. This fact has been established by the report of the UP PCB and of the Joint Committee, filed before this Hon'ble Tribunal.

   It is most respectfully submitted, that it was incumbent upon the applicant to prove his case by adducing sufficient evidence, and not make wild and baseless allegations against the answering respondent, who has been forced to run pillar to post seeking legal advice, resulting in legal costs and loss of productivity.

   It is most respectfully submitted that even the photographs annexed with the OA, nowhere bear any description or state that the same pertain to the answering respondent's establishment, however the

applicant has tried to pass off the said photographs as if the same pertain to the establishment of the answering respondent.

Moreover, even in the representations dated 18.8.2022 and 14.3.2023, made by the applicant to the official respondents, nowhere the answering respondent has been named. It is thus clear, that even the certificate by the applicant in Para 5.18 of the OA, stating that he has exhausted other alternative remedies, is misleading.

Moreover, even in the body of the OA, the applicant has not once mentioned the answering respondent, despite that, he has been arrayed as a respondent in the memo of parties.

It is further submitted that without once naming the answering respondent in the body of the OA, the OA is full of baseless words & phrases like "*illegal & unauthorized dying factories*", and "*These dying factories are operating illegally without obtaining any Air & Water consent from R.3 i.e UP PCB and without obtaining the ground water extraction NOC/ Permission/ Consent from UP Ground Water Department*". Hence, the applicant has created an impression, as if it's the answering respondent who is running his establishment, without any authorization from the official respondents.

It is submitted that all that the applicant had to do was to file a simple RTI application with the UP PCB or the Ground water department, and he could have received this

information, from the relevant authorities, without having to invoke the hallowed jurisdiction of this Hon'ble Tribunal. Rather, the applicant has chosen the long route, by invoking the jurisdiction of this Hon'ble Tribunal, with incomplete facts, thereby wasting precious Judicial time and resources.

It is therefore stated that the present OA is full of general and omnibus allegations, and the same deserves to be dismissed with exemplary cost as per S.23(2) of the NGT Act, 2010, so that the plenary jurisdiction of this Hon'ble Tribunal is not lightly invoked by irresponsible litigants, in future.

2. That at the time of inspection by the Joint Committee on 13.6.2023 and 14.6.2023, no violation of environmental norms was reported by the committee, and it was stated that the effluents were being discharged through the ETP. It is only in the subsequent report Dt. 13.10.2023, that it has been reported that the ETP was not functioning properly, however no details thereof were provided.

Thereafter in the subsequent inspection report submitted to this Hon'ble Tribunal by letter Dt.2.1.2024, it was submitted that the unit was found complying and show cause notices were revoked, however, EC of Rs.11,25,000/- was imposed.

It is submitted that the same is against the against the principles of natural justice, since neither the show cause was ever served on the answering respondent, nor an opportunity to answer to the show cause notice has been

allowed, nor it has ever been specified as to what extent the violation was observed.

It is further submitted that the answering respondent had made an application alongwith requisite fee, for sample collection on 17.10.2023, with the UP PCB, however the inspection was carried out by the official respondent only on 21.12.2023, where the answering respondent was found to be operating within limits. It is therefore submitted that, even if the answering respondent had failed the test on 2nd inspection, the officials have aggravated the penalty on the answering respondent, by carrying out the 3rd inspection, only on 21.12.2023 and not immediately, eventhough the fee for inspection had been deposited by the answering respondent on 17.10.2023, and therefore the number of days of alleged violation was much less than that for which the answering respondent has been penalized @Rs. 15,000/- per day.

It is therefore prayed that this Hon'ble Tribunal be pleased to quash the penalty order in the interest of justice.

3. That in this regard, the Hon'ble Supreme Court of India has held in Dr. Buddhi Kota Subbarao v/s Mr. K. Parasaran, 1996(5) SCC 530, as under:

"*No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions. After giving our careful consideration to the submissions made at the bar as well as those contained in the memorandum of the application, we are*

of the opinion that this application is misconceived, untenable and has no merits whatsoever. It is accordingly dismissed".

Further, the Hon'ble Supreme Court of India, has held in Noorduddin V/s K.L Anand 1995 SCC(1) 242, as under:
"*Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice*".

Furthur the Hon'ble Supreme Court of India has held in Sabia Khan & Ors. v/s State of UP & Ors. (1999)1 SCC 271, as under:
"*4. After hearing Mr. Sharma, learned Counsel for the petitioners, it is obvious that the petition is misconceived and based on a total misconception. It is an obvious attempt to question the correctness of the orders of this Court through a writ petition under Article 32, which is not permissible. The objection with regard to the office report is also not tenable. Filing of such a petition is an abuse of the process of the Court and waste of the time of the Court. We do not find any merit in this petition which is dismissed with costs, assessed at Rs. 10,000/-*".

That in Satyabrata Sanjeev Kumar Mohanta v/s MoEF&CC (OA/53/ 2023/EZ), the Hon'ble NGT has held as under:
"*26. We are, therefore, satisfied that not only is the Original Application not maintainable but the same is an abuse of process of Court in view of the order passed by*

the Hon'ble High Court of Orissa at Cuttack and the Hon'ble Supreme Court.

27. In view of above, the Original Application No.53/2023/EZ is accordingly dismissed with a cost of Rs. 10,000/- (Rupees Ten Thousand only) against the Applicant, Satyabrata Sanjeeb Kumar. The amount of cost shall be deposited by the Applicant with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata, within one week from the date of this order. In case the Applicant fails to deposit the amount of cost with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata, the same shall be recovered from him by the Collector & District Magistrate, Keonjhar, in accordance with law and the same shall be deposited with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata.

28. Let a copy of this order be also forwarded to the Collector & District Magistrate, Keonjhar, for due compliance".

That in Virani Construction Co. v/s The State Level Environmental Impact Assessment Committee, Appeal No.72/ 2013, the Hon'ble NGT has observed as under:

"*16. Taking a stock of the foregoing discussion, we are of the opinion that the Appeal is not maintainable and is incompetent. We are of further opinion that the appellant filed the present Appeal with malafide intention to put pressure on SEAC and SEIAA, in order to escape from credible action contemplated against him. In this view of*

the matter, the Appeal is liable to be dismissed with exemplary costs. We accordingly dismiss the Appeal with costs of Rs.1,00,000/-(Rs.One Lac)".

That in Waseem Ahmad v/s State of UP, OA/62/2023, the Hon'ble NGT has held as under:

"*5. In view of above, the application was based on misleading and false facts which has resulted in abuse of process of law. Accordingly, the application is dismissed with cost quantified at Rs. 25,000/-*".

That the Hon'ble High Court of Delhi has held in Trans India Logistics v/s UOI, 2014 SCC Online Del 1135, has held as under:

"*9. The aforesaid conduct of the petitioner amounts to deliberate concealment of material facts from the Court, which itself is considered a sufficient ground for the Court to dismiss the present petition. The petitioner cannot expect equity to flow in his favour when he elects to approach the Court with unclean hands and states half truths and makes selective disclosures.*

10. In view of the aforesaid facts and circumstances, while refraining from imposing substantial costs on the petitioner for intentionally failing to reveal all the necessary and material facts to the Court and deliberately failing to place on record the relevant documents, the present petition is dismissed with costs of Rs. 10,000/- to be deposited with the Delhi High Court Mediation and

Conciliation Centre within two weeks from today and proof of deposit, placed on record within the same time".

4. It is reiterated that answering respondent is carrying out its business as per law. It is also submitted that as per Section 20 of the National Green Tribunal Act, 2010, one of the principles that the Hon'ble Tribunal is required to apply while deciding any issue before it is that of "sustainable development". It is submitted there are laws and norms which every industry in India, is liable to follow while carrying out its business, so as to mitigate the harmful effects to the maximum possible degree, which in the present case, the answering respondent is fully abiding by. It is submitted that the dyeing industry in India is competing against industries in other parts of the world like that in Bangladesh, where the labour laws and environment norms are non existent.

It is submitted that the answering respondent is not only complying with all the environmental laws, but also labour laws, and in the present globalized hyper competitive market, and any disruption, costs dearly to the answering respondent.

5. That the answering respondent is running his establishment with all requisite consent and permissions from the relevant authorities. In this regard it is submitted that the answering respondent No. 7 i.e, Lakshya Enterprises is holding consent to operate issued by the UP PCB for dyeing and washing of jeans. it is also submitted that the answering respondent has been issued no objection certificate for the use of ground water by the

ground water department, Ministry of Jal Shakti, Government of Uttar Pradesh. Furthermore, the answering respondent has been authorised by the UP PCB for the generation, collection, utilisation, storage and disposal or any other use of hazardous or other waste or both. Further, the answering respondent has engaged the services of Bharat Oil and waste management Ltd., for lifting, transporting, treatment, storage and disposal of hazardous waste from its plant and the same is being carried out by the latter as per the agreement, and in terms of environmental norms. Moreover, the said agreement envisages that the latter would also undertake complete analysis of hazardous waste as per CPCB guidelines and the latter may also engage a govt recognised or MOEA approved third party laboratory for the said purpose. It is therefore submitted that the applicant is making a false and baseless allegation without any iota of evidence supporting the same. It is further submitted that the answering respondent is not extracting ground water beyond the permissible limit. It is also submitted that no effluent whatsoever is being pumped in the ground, hence there is no question of contamination of the ground water. It is submitted that the sludge is being collected by the aforesaid, M/S Bharat Oil and waste management LTD.

PARAWISE REPLY TO THE ORIGINAL APPLICATION FILED BY THE APPLICANT

1-4 That the contents of the said para are false therefore hence, denied except those that are matter of record. The applicant

claims to be engaged in activities relating to environment protection and restoration for last many years, however, he has not given any details regarding the same and no evidence has been annexed supporting the said assertion. It is submitted that the present petition filed by the applicant is an abuse of the process of law as has been explained in detail in preliminary submissions, and the same must be read as part of reply to the said para. It is also specifically denied that the applicant is a resident of Ghaziabad, UP and as such the present petition at best can be termed as a public interest litigation which can only be entertained by the Hon'ble High Court of Delhi and the Hon'ble Supreme Court of India.

REPLY TO FACTS OF THE CASE

5.1 – 5.4 That the contents of the said para are false therefore hence, denied except those that are matter of record. That the answering respondent is running his establishment with all requisite consent and permissions from the relevant authorities. In this regard it is submitted that the answering respondent No. 7 i.e, Lakshya Enterprises is holding consent to operate issued by the UP PCB for dyeing and washing of jeans. it is also submitted that the answering respondent has been issued no objection certificate for the use of ground water by the ground water department, Ministry of Jal Shakti, Government of Uttar Pradesh. Furthermore, the answering respondent has been authorised by the UP PCB for the generation, collection, utilisation, storage and disposal or any other use of hazardous or other waste or both. Further, the answering respondent has engaged the services of Bharat Oil and waste management Ltd., for lifting, transporting,

treatment, storage and disposal of hazardous waste from its plant and the same is being carried out by the latter as per the agreement, and in terms of environmental norms. Moreover, the said agreement envisages that the latter would also undertake complete analysis of hazardous waste as per CPCB guidelines and the latter may also engage a govt recognised or MOEA approved third party laboratory for the said purpose. It is therefore submitted that the applicant is making a false and baseless allegation without any iota of evidence supporting the same. It is further submitted that the answering respondent is not extracting ground water beyond the permissible limit. It is also submitted that no effluent whatsoever is being pumped in the ground, hence there is no question of contamination of the ground water. It is submitted that the sludge is being collected by the aforesaid, M/S Bharat Oil and waste management LTD.

5.5. – 5.10 That the contents of the said para are false and, therefore denied except those that are matter of record. It is specifically denied that any untreated or toxic effluent is being directly released in the drains, hence the answering respondent is carrying out its activities fully in conformity with the law.

That as regards the CETP, the relevant authorities are best equipped to answer the same.

It is factually incorrect on the part of the applicant to say that the answering respondent has not installed an ETP and that effluent is being discharged without it being treated.

It is specifically submitted that the photographs of the dyeing units annexed as ANNEXURE A-1 with the OA, do not pertain

to the answering respondent. Hence, it is submitted that the applicant has deliberately tried to mislead this Hon'ble Court by showing photographs of un-treated effluent being discharged and passing it off as that of the answering respondent's establishment.

It is specifically denied that any untreated toxic effluent is being released in the open and it is submitted that all precautions as per law are being observed by the answering respondent.

It is further submitted that the running of diesel generator is part of the consent granted by the UP PCB to the respondent, and on this count also the applicant has made completely false allegations.

It is however submitted that the answering respondent is complying with the restrictions imposed from time to time under GRAP in Delhi NCR by the Commission for Air quality management in NCR and adjoining areas.

5.11. – 5.14 That the contents of the said para are false and therefore denied except those that are matter of record. It is reiterated that the answering respondent is running his establishment fully in compliance with the environmental norms and in line with authorisation received by it from various governmental organisations. It is submitted that all industrial operations are being carried out as per norms and the applicant is making bald allegations without any supporting evidence.

That the applicant has not provided any evidence whatsoever to prove that the areas of Roop nagar, Arya nagar, Tronica City of Loni area Ghaziabad are having any higher rates of cancer than in other parts of Delhi NCR. Moreover, the

applicant has not annexed any evidence to prove of the said areas having earmarked as "Cancer Colonies".

It is submitted that no untreated affluents are being released by the answering respondent and all the activities are being carried out as per law.

That electricity connections have been installed as per rules and the answering respondent is making regular payments of his regular electricity bills. This is another instance of wild allegations being made by the applicant without an iota of evidence supporting the same.

5.15 That the contents of the said para are false and, therefore denied except those that are matter of record. That the judgement of the Hon'ble Supreme Court in CA/6776 of 2009 was rendered in the peculiar facts of the said case and has no bearing whatsoever in the present case. It is reiterated that the answering respondent is carrying out all the activities as per the law and is being regularly monitored by the various governmental agencies from time to time ensuring compliance, in letter and spirit.

5.16. – 5.17. That the contents of the said para are false and, therefore denied except those that are matter of record. It is submitted that the correspondence made by the petitioner with the authorities is for the relevant authorities to answer. It is reiterated that even prior to the filing of the present OA, the relevant authorities have carried out inspection at the answering respondent's establishment, and have found it to be in compliance with the norms.

5.18. – 5.19 That the contents of the said para are false and, therefore denied except those that are matter of record. It is submitted that the present OA is not bonafide and is an abuse of the process of the law and has been filed hastily without ascertaining the facts. It is submitted that prior to the coming of the applicant before this Hon'ble Tribunal, it was incumbent upon the applicant to carry out due diligence and to find out if in fact the answering respondent lacked authorisation from various governmental authorities. By launching the present malicious prosecution against the answering respondent, not only the present OA is liable to be dismissed, but in fact exemplary cost is liable to be imposed on the applicant for putting the dyeing industry in India at a comparative disadvantage than its counterparts in Bangladesh, and also putting the jobs of several workers at risk.

6.1. – 6.8 That the contents of the said para are false and, therefore denied except those that are matter of record. It is submitted that the applicant is sermonising on the ill effects of the dyeing industry and hence does not require any reply in this regard from the answering respondent. It is reiterated that answering respondent is carrying out its business as per law. It is also submitted that as per Section 20 of the National Green Tribunal Act, 2010, one of the principles that the Hon'ble Tribunal is required to apply while deciding any issue before it is that of "sustainable development". It is submitted that there are laws and norms which every industry in India, is liable to follow while carrying out its business, so as to mitigate the harmful effects to the maximum possible

degree, which in the present case, the answering respondent is fully abiding by.

REPLY TO GROUNDS

7.1 – 7.5 That the contents of the said para are false and, therefore denied except those that are matter of record. It is reiterated that the answering respondent is carrying on its activities as per the applicable laws. That with regard CETP, the relevant authorities are best suited to reply to the same.

8 That the contents of the said para are false and, therefore denied except those that are matter of record. That the present OA has been file beyond the period of limitation and as such cannot be entertained by this Hon'ble Tribunal.

SUBMISSIONS WITH REGARD TO REPORT OF THE UP PCB FILED BEFORE THIS HON'BLE TRIBUNAL

1. That the said report has been filed after inspection by their team on 21.12.2023. As per para 2, it is clear that the answering respondent is having his own individual affluent treatment plant. To that extent the assertion of the applicant that the answering respondent is not having any ETP, has been proved wrong.

2. It is also clear that in the inspection carried out by the UP PCB on 07.10.2023, the visiting team found the ETP not functioning properly, however no details thereof were provided. That at the time of inspection by the Joint Committee on 13.6.2023 and 14.6.2023, no violation of environmental norms was reported by the committee, and it was stated that the effluents were being discharged through the ETP. It is only in the subsequent report Dt. 13.10.2023,

that it has been reported that the ETP was not functioning properly, however no details thereof were provided.

Thereafter in the subsequent inspection report submitted to this Hon'ble Tribunal by letter Dt.2.1.2024, it was submitted that the unit was found complying and show cause notices were revoked, however, EC of Rs.11,25,000/- was imposed. It is submitted that the same is against the against the principles of natural justice, since neither the show cause was ever served on the answering respondent, nor an opportunity to answer to the show cause notice has been allowed, nor it has ever been specified as to what extent the violation was observed.

It is further submitted that the answering respondent had made an application alongwith requisite fee, for sample collection on 17.10.2023, with the UP PCB, however the inspection was carried out by the official respondent only on 21.12.2023, where the answering respondent was found to be operating within limits. It is therefore submitted that, even if the answering respondent had failed the test on 2nd inspection, the officials have aggravated the penalty on the answering respondent, by carrying out the 3rd inspection, only on 21.12.2023 and not immediately, eventhough the fee for inspection had been deposited by the answering respondent on 17.10.2023, and therefore the number of days of alleged violation was much less than that for which the answering respondent has been penalized @Rs. 15,000/- per day.

It is therefore prayed that this Hon'ble Tribunal be pleased to quash the penalty order in the interest of justice.

3. That even in the inspection dated 21.12.2023, carried out by the UP PCB no non compliance was observed by the visiting team. Hence, on two occasions nothing adverse have been detected against the answering respondent.
4. That the details of the authorisation have been given at page 24 of the said report, and it is clear that the answering respondent is in full compliance of all governmental norms.

SUBMISSIONS WITH REGARD TO REPORT OF THE JOINT COMMITTEE FILED BEFORE THIS HON'BLE TRIBUNAL.

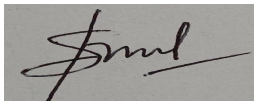
1. That the joint committee undertook its inspection on 13.06.2023 and 14.06.2023, as per the report.
2. That even the joint committee has stated in its report that the answering respondent has acquired CTO from the UP PCB, and the mode of affluent disposal is through the ETP, and the disposal is done through TSDF. It was also found that the ETP was in operation and the lab analysis of the treated affluent was found to be within the prescribed norms.

PRAYER

On the basis of the above submissions, it is humbly prayed:

1. That the environmental compensation amounting to Rs. 11,25,000/- be quashed and set aside.
2. That the present OA be dismissed, with exemplary cost in favour of the answering respondent.

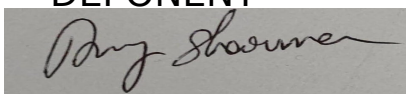
Any other and further orders that this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case.



DEPONENT

Through

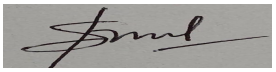
Date: 9.2.2024
Place: New Delhi



Anuj Kumar Sharma
ADVOCATE

VERIFICATION

I, the deponent herein, do hereby verify that the contents of the above reply are true and correct to my knowledge based on records. Nothing is false therein. Verified at New Delhi on 9.2.2024.



DEPONENT

IN THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
O.A. NO. 248/2023

IN THE MATTER OF:

Varun Gulati ... Applicant

Versus

State of UP & Ors. ... Respondents

AFFIDAVIT

I, SUBHASH CHAND, Aged about 46 years, S/o Sh. - RAMCHANDER, proprietor of respondent No. 07. Garments, R/o LAKSHAY ENTERPRISES, do hereby solemnly affirm and state as under:- A-44 ROOP NAGAR Presently at New Delhi

1. I am the answering respondent herein in the above noted matter and am well conversant with the facts and circumstances of the present case and also competent to swear the present affidavit.

2. That the contents of the accompanying reply has been drafted by my counsel as per my instructions and to say that the contents thereof are true and correct.

3. That the annexures are true copy of their respective originals.

DEPONENT

D3731/2010
deponent who is signed in my presence

VERIFICATION

I, the deponent herein, do hereby verify that the contents of the above reply are true and correct to my knowledge based on records. Nothing is false therein. Verified at New Delhi on 5 FEB 2024.

DEPONENT

The Seal of Oath Commissioner
S.L.No. 131/2022
Santosh Sharma
App. By - Delhi High Court
Period 26/04/2022 to 25/04/2024
Patiala House Courts, New Delhi

Solemnly sworn before me read over & explained to the deponent
Admitted to be correct

Oath Commissioner, New Delhi

5 FEB 2024

Uttar Pradesh Pollution Control Board
Building No TC-12V Vibhuti Khand, Gomti Nagar, Lucknow-226010
Phone 0522-2720828,2720831 Fax 0522-2720764 Email info@uppcb.in Website www.uppcb.com

176226/UPPCB/Ghaziabad(UPPCBRO)/CTO/both/GHAZIABAD/2023 **Date: 20/02/2023**

To,
M/s
LAKSHYA ENTERPRISES (old Name Shikha Enterprises)
A-44, Roop Nagar Industrial Area, Loni,GHAZIABAD,201102

Application Id-19603203

Consolidated Consent to Operate and Authorisation hereinafter referred to as the CCA (Consolidated Consent & authorization) (Fresh) under Section-25 of the Water (Prevention & Control of Pollution) Act, 1974 and under Section-21 of the Air (Prevention & Control of Pollution) Act, 1981

CCA is hereby granted to **LAKSHYA ENTERPRISES (old Name Shikha Enterprises)** located at **A-44, Roop Nagar Industrial Area, Loni,GHAZIABAD,201102** subject to the provisions of the Water Act, Air Act and the orders that may be made further and subject to following terms and conditions :-

1 This CCA LAKSHYA ENTERPRISES (old Name Shikha Enterprises) **granted for the period from 20/02/2023 to 31/12/2024** and valid for manufacturing of following products

S No	Product	Quantity	Unit
1	Dyeing and Washing of Jeans 400 Pcs/day	400	Numbers/Day

2. Conditions under Water(Prevention and Control of Pollution) Act -1974 as amended :-

(i) The daily quantity of effluent discharge (KLD) :-

Kind of Effluent	Quantity(KLD)	Treatment facility	Discharge point
Domestic	0.6 KLD	Septic Tank	
Industrial	22 KLD	ETP	

(ii) Trade Effluent Treatment and Disposal :-The applicant shall operate Effluent Treatment Plant consisting of primary/secondary and tertiary treatment as is required with reference to influent quantity and quality.

In case of stoppage of functioning of ETP, production has to be stopped immediately and this Board has to be intimated by fax/phone/email with a report in this regard to be dispatched immediately.

(iii) The treated effluent shall be recycled to the maximum extent and should be reused within the premises for gardening etc. Quality of the treated effluent shall meet to the following general and specific standards as prescribed under Environment (Protection) Rules, 1986 and applicable to the unit from time-to-time :-

Industrial Effluent Quality Standard

S.No.	Parameter	Standard

(iv) Sewage Treatment and Disposal :- The applicant shall provide comprehensive STP as is required with reference to influent quantity and quality.In case of stoppage of functioning of STP, production has to be stopped immediately and this Board has to be intimated by fax/phone/email with a report in this regard to be

dispatched immediately

(v) The treated sewage shall be reused in gardening as far as possible. The STP shall be maintained continuously so as to achieve the quality of the treated sewage to the following standards.

S No.	Parameters	Standards

3. Conditions under Air (Prevention and Control of Pollution) Act -1981 as amended :-

i) The applicant shall use following fuel and install a comprehensive control system consisting of control equipment as required with reference to generation of emissions and operate and maintain the same continuously so as to achieve the level of pollutants to the following standards.

Air Pollution Source Details

S No.	Air Pollution Source	Type of fuel	Stack no	Control Device	Height of Stack
1	Baby Boiler 600 Kg/hr	Biomass/Bi o briquettee/ PNG	1	Particulate Matter	15 meter from GL with dust collector
2	DG sets 60 KVA and 15 KVA	HSD	1	Sulphur Dioxide	As per EP Act 1986

Emmission Quality Standards

S No.	Stack no	Parameters	Standards
1	1	Particulate Matter	As per applicable standards
2	2	Sulphur Dioxide	As per applicable standards

In case of stoppage of functioning of air pollution control equipment, production has to be stopped immediately and this Board has to be intimated by fax/phone/email with a report in this regard to be dispatched immediately

(ii) The unit will not use any type of restricted fuel.

iii) Noise from the D.G. Set and other source(s) should be controlled by providing an acoustic enclosure as is required for meeting the ambient noise standards for night and day time as prescribed for respective areas/zones (Industrial, Commercial, Residential, Silence) which are as follows :-

Day time : from 6.00 a.m. to 10.00 p.m., Night time: from 10.00 p.m. to 6.00 a.m.

Standards for Noise level in db(A) Leq	Industrial Area		Commercial Area		Residential Area		Silence Zone	
	Day Time	Night Time	Day Time	Night Time	Day Time	Night Time	Day Time	Night Time
	75	70	65	55	55	45	50	40

4. Essential documents to be submitted by the Industry/Unit as Applicable :-

(i) Environment Statement in Form-V of Environment (Protection) Rules, 1986.

(ii) Quarterly compliance report of the CCA, photograph of ETP/APCs/Waste Storage Area.

5. Competent Authority reserves the right to change/modify/add any time any condition of this CCA.

The unit has to comply with the following specific & general conditions. Non compliance of any provision of this CCA and provisions of the Water Act, Air Act and Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 will results in legal action under the aforesaid Acts and Rules.

7 In compliance to the G O 1011 81-7-2021-09 (Writ) 2016 dated 13 10 2021 issued by Department of Environment, Forest and Climate Change, Uttar Pradesh. You are directed to develop Miyawaki Forest as per the SOP available at URL -http: www upecp.in/TrainingSession.aspx for ensuring timely compliance of this direction, you are hereby directed to submit a bank guarantee with minimum validity of one year of the amount equivalent to the sum of initial consent fees (Air and Water) or Rs. 50,000/- (Rs. Fifty Thousand Only) whichever is more, within 30 days from the date of issuance of this certificate. In case of non-compliance of this direction, your consent will be revoked by the Board.

8 If the unit uses the ground water and requires the permission from SGWA/CGWA for water abstraction then the industry will have to obtain No objection certificate for abstraction of ground water. It will be the responsibility of the industry to comply with the various conditions of the NOC obtained from the competent authority and submit to the Board, within 3 months time failing which CTO will be revoked

General Conditions:-

1 The applicant shall get analysed the samples of effluent/emission/hazardous wastes at least once in a three month from the laboratory recognized by the MoEF and shall report to the UPPCB.

2 The applicant shall however, not without the prior consent of the Board bring into use any new or altered outlet for the discharge of effluent or gases emission or sewage waste from the unit.

3 Treated Industrial waste water and domestic waste water shall be disposed jointly at one disposal point. The applicant shall provide discharge measurement equipment at final disposal point

4 The applicant shall strictly comply with conditions of this CCA and submit compliance report of stipulated conditions within 30 days of receipt of this CCA. If at any point of time, it is found that the industry is not complying with stipulated conditions or any further direction/instruction issued by the Board, legal action shall be initiated against the applicant

5. The applicant shall maintain good house keeping. All valves/pipes/sewer drains etc must be leak-proof

6 The industry shall provide uninterrupted entry to the STP/ETP inlet and outlet points, Air Pollution Control equipment and stack for smooth sampling/monitoring of efficiency of pollution control systems

7. The industry shall provide Inspection Book at the time of inspection to the Board's officials.

8 Whenever due to any accident or other unforeseen act or event, such emission occurs or is apprehended to occur in excess of standards laid down, such information shall be reported to the Board's offices and all other concerned offices. In case of failure of pollution control equipment, the production process connected to it shall be stopped with immediate effect

9. The industry shall operate in a manner so that all emissions be emitted through designated chimney/stack only.

10. In case of any damage to the agriculture productivity, human habitation etc. by the operation of industry, it shall be imperative to stop production in the industry with immediate effect and such information shall be reported to Board's offices. The industry shall be liable to pay compensation also in such cases as decided by the Competent Authority.

11. The applicant shall apply before the 60 days of expiry of CCA or any change in production types production capacity/manufacturing process/capacity enhancement etc. or any change in effluent discharge point or emission point

12. The Board reserves the right to revoke/add/modify any stipulated condition issued along with CCA, as may be necessary.

Specific Conditions:-

The industry shall maintain strict supervision on fluctuations in operating parameters with respect to each treatment unit of the Effluent treatment plant.

2- The industry will ensure the continuous and uninterrupted data supply from the OCEEMS to the SPCB and CPCB server.

3- The industry should ensure the operation of the ETP in such a manner that it confirm the standards lay down under the notification issued by MOEF&CC vide GSR 978 (E) dated 10/10/2016

4- The treated effluent shall be allowed to be discharged in the ambient environment only after exhausting options for reuse in industrial process irrigation in order to minimize freshwater usage

5- Flow meter to be installed in all water abstraction points and usage of fresh water to be minimized.

6- The industry will have to ensure permission from the CGWA/UPGWD for ground water extraction and it will be the responsibility of the industry to comply with the various conditions of the permission taken.

7- The industry shall submit the point wise compliance report of the CTO issued by the Board for year 2024 and audited balance sheet for the current year and the details of fees deposited during last three years within a month otherwise this CTO may be revoked.

8- If the CPCB or UPPCB issues the Closure order against the industry this consent order stands automatically suspended for that period

9- The industry shall submit Environmental Statement in prescribed form V as per rule no.14 of E.P Rules 1986

10- This consent is valid only for products and quantity mentioned above. Industry shall obtain prior approval before making any modification in product/process /fuel/ Plant machinery failing which consent would be deemed void

11- The industry shall abide by orders directions issued by Hon'ble Supreme Court Hon'ble High Court,Hon'ble National Green Tribunal, Central Pollution Control Board and U.P Pollution Control Board for protection and safeguard of environment from time to time.

12- The industry shall comply with various provisions of Air (Prevention and Control of Pollution) Act 1981 as amended, Water (Prevention and Control of Pollution) Act 1974 as amended, and comply with the provisions of Hazardous and Other Wastes (Management and Trans-boundary Movement) Amendment Rules, 2016 and all other applicable rules notified under E.P. Act 1986.

13- Unit shall comply with all the direction passed by Hon'ble NGT on dated 13.11.2018 in OA No. 317/2015 and OA No. 231/2014.

14- MSW waste should be suitable segregated. A separate and isolated MSW collection center should be provided.

15- The quantity of recycled effluent after final treatment to be send to the Board monthly. Unit shall comply with Charter prepared by CPCB.

16- Industry shall send the records of energy meter reading installed on ETP and Flow meter reading regularly on quarterly basis.

17- Unit shall comply Plastic Waste Management Rule, 2016 as amended and Solid Waste Rule, 2016 as amended.

18- The unit shall recycle as much water as possible within the plant before discharging it after treatment into the ETP

19- Unit shall comply with various Waste Management Rules as notified by MoEF & CC i.e. Solid Waste Management Rules, 2016, Hazardous and Other Wastes (Management and Trans boundary) Rules, 2016, as amended.

20-The industry shall ensure the time bound compliance of stringent norms as published by the UPPCB vide office memorandum No. H 48273/C-1/NGT-83/2020, dated 27.02.2020 (available at URL uppcb.com pdf uppcb_28022020.pdf) in compliance of The Hon'ble NGT order dt. 14.11.2019 in O.A. No. 1038/2018

21- The unit shall submit test report of ETP outlet and Boiler emission from approved lab after operation of unit

22- Unit shall install PTZ camera at all air/water effluent/emission generation points and connected to UPPCB control room

23- Any source of emission other than that mentioned in the Air consent seeking application will not be permitted by the Board.

24- The industry shall use only approved fuel as per CAQM direction no. 65.

25- The industry should ensure the operation of the air pollution control system (APCS) in such a manner that the air emission confirms with the standards prescribed under the E.P Act 1986 as amended.

26- The industry will ensure the continuous and uninterrupted data supply from the OCEEMS to the SPCB and CPCB server.

27- The industry shall submit monitoring reports of all stacks and ambient air quality from a certified approved laboratory under E.P. Act 1986.

28- The industry shall obtain prior consents in the event of any addition of new emission generation sources such as- Boiler Furnace/ Heaters/ D.G. Sets or alteration of existing emission sources in accordance with section- 21/22 of air Act 1981 (as amended respectively).

29- The use of Pet coke and Furnace oil as a fuel is restricted in compliance of the Hon'ble Supreme court order.

30- Unit shall establish Miyawaki forest as per the GO no. 1011/81-7-2021-09(rit)/2016 dated 13.10.2021 of Deptt. of Environment,forest and climate change and BG of Rs. 50,000/- be deposited within a months time along with the proposal for proposed plantation.

31- Unit shall comply with the CAQM (Commission for Air Quality Management in NCR and Adjoining Areas) direction no. 53 and 62-65 and other direction issued time to time regarding use of cleaner fuel.

32- Unit shall comply with the CAQM (Commission for Air Quality Management in NCR and Adjoining Areas) direction no. 55 regarding DG sets.

33- Unit shall operate and maintain/upgrade the air pollution control device in such manner that emission should be as per norms prescribed by CAQM.

VIVEK ROY Digitally signed by VIVEK ROY Date: 2023.02.20 23:25:57 +05:30

Copy to:

CEO-I

Regional Officer, UPPCB, Ghazibad.

VIVEK ROY Digitally signed by VIVEK ROY Date: 2023.02.20 23:26:23 +05:30

CEO-I

GROUND WATER DEPARTMENT

Ministry of Jal Shakti
Government of Uttar Pradesh

Form 8 (C)

[See Rule 8(1)]

AUTHORIZATION/ NO-OBJECTION CERTIFICATE FOR SINKING OF NEW / EXISTING WEL FOR INDUSTRIAL/ COMMERCIAL/ INFRASTRUCTURAL OR BULK USER OF GROUND WATER

[Under Section 14 of the Uttar Pradesh Ground Water Management and Regulation Act, 2019.]

AUTHORIZATION/ NO-OBJECTION CERTIFICATE NO: NOC034461

VALID FROM 29/03/2023 TO 28/03/2028

{UIS10(1) of the Uttar Pradesh Ground Water Management and Regulation Act, 2019}

egistration No. 202302000386

ame of the Owner	SUBHASH CHAND YADAV		
esignation	PROPRIETOR		
		Company Name कपनी का नाम	LAKSHAY ENTERPRISES OLD NAME SHIKHA ENTERPRISES
ompany Address पनी का पता	A-44 ROOP NAGAR INDUSTRIAL AREA LONI GZB	Authorization Letter प्राधिकार पत्र	Download
ddress of the Applicant	A-44 ROOP NAGAR INDUSTRIAL AREA LONI GHAZIABAD	Application No.	GZBD0223NIN0
ate of Submission	17/02/2023	Specimen Signature	

ocation Particulars

istrict	Ghaziabad		
ot No./Khasra No.	PLOT NO- A-44, KHASRA NO - 1477	Block	LONI
ard No./Holding No.		Municipality/Corporation	Yes
			LONI

articular of the Proposed Well and Pumping Device

ate of onstruction/Sinking of the ell	02/08/2021		
ype of Well	Tube Well/Boring	Depth of the Well (In meter)	60.00
urpose of well	Industrial	Assembly Size(For Tube Well)	
rainer Position (For Tube Well)			
ype of Pump Used	Submersible	H.P. of the Pump	5.00
perational Device	Electric Motor	Rate of Withdrawal (m^3/hr.)	11.00
ate of Energization (In Case of Electric Pump)		05/08/2021	
aximum Allowable Rate of thdrawal (m^3/hr.):	11.00	Maximum Allowable Running Hours Per Day:	4.00
ximum Allowable Annual traction of Ground Water	13200	Recharge Required	26400.00

...ing that as shown at Sl (3i) for Running Hours per day as shown at Sl (3k), and for maximum allowable annual extraction of ground wate
...shown at Sl (3k) and is valid subject to the observance of the conditions stated overleaf

- Holder of this NOC is hereby directed to assure annual recharge of 26400 00 cubic meter as specified under the application form within the given tim
period

GENERAL CONDITIONS:

Holder of this NOC is hereby directed to fill from 1(A) for registering his/her well within 90 days as mentioned in application form shall only started after registration of his/her NOC

In case of any change of ownership of the proposed well, fresh authorization has to be obtained

All Users abstracting ground water in excess of 100 m3/d shall be required to submit impact assessment report prepared by an accredited consultant from CGWA and National Accreditation Board for Education and Training (NABET) The report should highlight environmental risks and proposed management strategies to overcome any significant environmental issues such as ground water level decline, land subsidence etc within three months of completion of the same to Ground Water Department Uttar Pradesh The list of accredited Individuals/ Institutions is available on the official web-portal of CGWA

For the purpose of measuring and recording the quantity of ground water extracted, every said user shall affix digital water flow meters (conforming to BIS standards) having telemetry system in the abstraction structure, which record rate and quantum of extraction, at outlet of pumping devices and it shall be presumed that the quantity recorded by the meter has been extracted by the said user, until the contrary is proved The rate of extraction of ground water from the well shall not exceed to the recorded rate from water meters

The concerned Authority reserves the right to stop extraction of ground water from the well due to quality hazards or any other reasons if the situation so demands

In case of any change of ownership of the existing well, fresh registration has to be obtained

No change of location design rate of withdrawal and pumping device in respect of the existing well of this certificate shall be made without prior permissio of the Competent Authority Any deviation in this regard shall lead to cancellation of this registration

In case any of the particulars I information furnished by the applicant in his application for issuance of this registration is found to be incorrect during verification at any subsequent stage , this registration is liable for cancellation

The Certificate of Authorization/ NOC shall be valid for a period of five years from the date of issue The applicant shall have to apply for renewal through a fresh application, at least ninety days prior to expiry of its validity

Construction of piezometers and installation of digital water level recorders with telemetry shall be mandatory for user Depth and zone tapped of piezomet should be commensurate with that of the pumping well The data, obtained from digital water level recorders shall be made available to this office on monti basis

Guidelines for Installation of Piezometers and their Monitoring

Piezometer is a borewell /tubewell used only for measuring the water level by lowering the tape/ sounder or automatic water level measuring equipment It also used to take water sample for water quality testing when ever needed General guidelines for installation of piezometers are as follows

- The piezometer is to be installed/constructed at the minimum of 50 m distance from the pumping well through which ground water is being withdrawn The diameter of the piezometer should be about 4 to 6
- The depth of the piezometer should be same as is case of the pumping well from which ground water is being abstracted If, more than one piezometers are installed the second piezometer should monitor the shallow ground water regime It will facilitate shallow as well as deeper ground water aquifer monitoring
- No of piezometers to be constructed & Type of water level monitoring mechanism shall be as per below table

S No	Quantum of Ground water withdrawal (cum/day)	No of piezometers required	Monitiring Mechanism	
			Manual	DWLR with Telemetry
1	< 10	0	0	0
2	11 - 50	1	1	0
3	50- 500	1	0	1
4	> 500	2	0	2

- The measuring frequency should be monthly and accuracy of measurement should be up to cm the reported measurement should be given in me upto two decimal
- For measurement of water level sounder or automatic water level recorder (AWLR)/ Digital Automatic water level recorder (DWLR) with telemetry system should be used for accuracy
- The measurement of water level in piezometer should be taken, only after the pumping from the surrounding tube wells has been stopped for abot four to six hours
- All the details regarding coordinates, reduced level (with respect to mean level), depth, zone taped and assembly lowered should be provided for bringing the piezometer into the Hydrograph Monitoring System for Ground Water Department, Uttar Pradesh, and for its validation.
- The ground water quality has to be monitored twice in a year during pre-monsoon (May/June) and post-monsoon (October/November) periods Quality may be got analyzed from NABL approved lab Besides, one sample (1 lt capacity bottle) to the concerned Director Ground Water Department Uttar Pradesh, for chemical analysis.
- A Permanent display board should be installed at piezometer/Tube wells site for providing the location, piezometer/ tube well number depth and zone tapped of piezometer/tube well for standard referencing and identification
- Any other site specific requirement regarding safety and access for measurement may be taken care of

Any other condition(s) that may be imposed by the concerned Authority

In case, any of the particulars I information furnished by the applicant in his application for issuance of this permit is found to be incorrect during verificatior any subsequent stage, this permit is liable for cancellation

UTTAR PRADESH POLLUTION CONTROL BOARD

TC-12V, Vibhuti Khand,Gomti Nagar, Lucknow-226010

Phone:0522-2720828,2720831 Fax:0522-2720764 Email: info@uppcb.com Website: www.uppcb.com

Ref. No : 20589/UPPCB/Ghaziabad(UPPCBRO)/HWM/GHAZIABAD/2023

Dated :26/06/2023

To,

M/s LAKSHYA ENTERPRISES (old Name Shikha Enterprises)

A-44, Roop Nagar Industrial Area, Loni,GHAZIABAD,201102

Tehsil : Loni

District :GHAZIABAD

Sub :- Authorisation issued under the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016

1. Number of authorization and date of issue 20589 and 26/06/2023 .
2. Reference of application (No. and date) 21108700 and 01/06/2023 .
3. Mr SUBHASH CHAND YADAV of M/s LAKSHYA ENTERPRISES (old Name Shikha Enterprises) is hereby granted an authorization based on the enclosed signed inspection report for generation, collection, utilization, storage and disposal or any other use of hazardous or other wastes or both on the premises situated at A-44, Roop Nagar Industrial Area, Loni, GHAZIABAD .

Details of Authorisation

S No.	Category of Hazardous Waste as per the Schedules I,II and III of these rules	Authorised mode of disposal or recycling or utilization or co-processing, etc.	Quantity(ton/annum)
1	Schedule I, Cat. 5.1 Used or Spent Oil	Through Authorised Recycler/TSDF	0.2 KL/Annum
2	Schedule I, Cat. 35.3 Chemical sludge from waste water treatment	Through TSDF	2 Ton/Annum

1. The authorization shall be valid for a period of 25/06/2028 from the date of issue of this letter .
2. The authorization is subject to the following general and specific conditions (please specify any conditions that need to be imposed over and above general conditions, if any) .

A General Conditions of Authorization -

1. The authorised person shall comply with the provisions of the Environment (Protection Act, 1986, and the rules made there under .
2. The authorisation or its renewal shall be produced for inspection at the request of an officer authorised by the State Pollution Board .
3. The person authorized shall not rent, lend, sell, transfer or otherwise transport the hazardous and other wastes except what is permitted through this authorization .
4. Any unauthorized change in personnel, equipment or working conditions as mentioned in the application by the person authorized shall constitute a breach of his authorisation .

5. The person authorised shall implement Emergency Response Procedure (ERP) for which this authorisation is being granted considering all site specific possible scenarios such as spillages, leakages, fire etc. and their possible impacts and also carry out mock drill in this regard at regular interval of time .
6. The person authorised shall comply with the provisions outlined in the Central Pollution Control Board guidelines on Implementing Liabilities for Environmental Damages due to Handling and Disposal of Hazardous Waste and penalty .
7. It is the duty of the authorised person to take prior permission ot the State Pollution Control Board to close down the facility .
8. The imported hazardous and other wastes shall be fully insured for transit as well as for any accidental occurrence and its clean-up operation .
9. The record of consumption and fate of the imported hazardous and other wastes shall be maintained .
10. The hazardous and other waste which gets generated during recycling or reuse or recovery or pre-processing or utilisation of imported hazardous or other wastes shall be treated and disposed of as per specific conditions of authorisation .
11. The importer or exporter shall bear the cost of Import or export and mitigation of damages if any
12. An application for the renewal of an authorisation shall be made as laid down under these Rules .
13. Any other conditions for compliance as per the Guidelines issued by the Ministry of Environment, Forest and Climate Changes or Central Pollution Control Board from time to time .
14. Annual return shall be filed by June 30th for the period ensuring 31st March of the year .
15. The Unit will file the renewal application at least 2 months prior to the expiry of this Order.

B Specific Conditions of Authorization

1- The unit will submit the proof of depositing the requisite processing fees of application in a month otherwise this authorization will stands automatically cancelled.
2- The wastes must be safely collected in leak proof containers and shall be duly marked in a manner suitable for handling, storage and transport and the packaging shall be easily visible and be able to with stand physical conditions and climatic factors. All hazardous waste containers/bags shall be provided with a general label as given in Form 8. The storage area should be at an isolated spot in the premises and must be fenced, covered and duly marked.
3- The authorized person/agency shall ensure that no adverse impact on the air, soil and water including groundwater takes place due to activities for which authorization has been requested. Comprehensive safety measures must be followed in handling of wastes and the staff must be properly trained.
4- It is brought to your notice that as per the order dated 14.11.2003 passed by the Hon'ble Supreme Court in W.P. (c) 657 of 1995, no industry covered under Hazardous Waste (Management and Handling) Rules, 1989 (as amended) shall be allowed to operate without valid authorisation. It is also provided in the same order that industries which are not complying with the conditions shall not be allowed to operate. Hence in case you fail to apply for authorisation before its expiry or fails to comply with conditions of the earlier authorisation issued to you, closure order shall be issued against your industry without any further notice.
5- The applicant must file returns on prescribed Form 4 along with a compliance report of this letter. You should also maintain records on Form-3 and present it to Board's inspecting officials.
6- In case of occurrence of an accident, complete details on Form-11 must be sent to U.P. Pollution

Control Board at the earliest along with details of mitigative and remedial measures taken.
7- It is also the mandatory duty of the occupier of industry as well as operator of a facility to develop suitable waste treatment and disposal facility and the design of the facility must be approved by the Board. Details along with the project report must be sent in this regard within fifteen days of receipt of this letter, otherwise the industry shall become member of a common TSDF and the industry shall start sending the Hazardous waste already stored along with the Hazardous waste generated at present at this TSDF. The proof of valid membership of TSDF along with proof of disposal of hazardous waste to TSDF shall be sent to U.P. Pollution Control Board within three months.
8- The authorised person shall not receive, collect, or store any hazardous waste from any unauthorised occupier or generator of hazardous wastes. In case any hazardous wastes is sold to any other reprocessing unit it must be ensured that such unit is fully complying with environmental requirements and has a valid authorisation of the Board.
9- In no case any hazardous wastes shall be disposed off on land, in any drain or stream. All spillages of hazardous chemicals, used containers of hazardous chemicals such as flammable, corrosive, explosive and toxic nature must be safely collected and stored. Non-compatible wastes must be suitably and safely handled.
10- Proposal regarding waste minimization and reuse of wastes must be sent. Details of any recovery/ reuse system must be sent within two months.
11- It is within the powers and functions of the U.P. Pollution Control Board to suspend/ cancel the authorization issued under the Rule- 6(2) of The Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
12- The stored waste shall not be taken out of the storage area except with the written permission of the State Pollution Control Board in this regard.
13- You are directed to display online data outside the main factory gate with regards to quantity and nature of hazardous chemicals being handled in the plant including waste water and air emissions and solid hazardous waste generated within the factory premises. Necessary compliance should be sent within fifteen days of receipt of this letter.
14- It is the mandatory duty of the authorized person to comply with the guideline for transportation of hazardous waste in accordance with Rule 18 of The Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Guidelines in this regard have been issued by Central Pollution Control Board from time to time.
15- You are directed to provide the complete details regarding the quantity of hazardous waste stored in the factory premises within a month.
16- You are directed to provide all hazardous waste generated in the factory to any TSDF operating in the state for the treatment and disposal and send the compliance report to the U.P. Pollution Control Board at the earliest.
17- Status report of hazardous waste stored in premises available storage capacity and future action plan for permanent safe disposal of hazardous waste shall be submitted within one month.
18- Ground water monitoring report of premises shall be submitted within one month.
19- Industry will follow the various provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

VIVEK ROY Digitally signed by VIVEK ROY Date: 2023.06.26 18:03:52 +05'30'

(Authorized Signatory)

UTTAR PRADESH POLLUTION CONTROL BOARD

Copy to: To the Regional Officer, U.P.Pollution Control Board, Ghaziabad for information and necessary action .

VIVEK ROY Digitally signed by VIVEK ROY Date: 2023.06.26 18:06:20 +05'30'

CEO/EE, I/C Circle_____

मिशन LiFE - पर्यावरण के लिए जीवन शैली

(Lifestyle For Environment)

जनसहभागिता का सन्देश

- स्वच्छता – देशसेवा में अपने परिवेश की स्वच्छता हेतु अपना सक्रिय योगदान सुनिश्चित करें
- संकल्प लें -एकल उपयोग प्लास्टिक उत्पाद जैसे कप, तश्तरी, चम्मच, स्ट्रॉ, ईयरबड्स आदि का उपयोग न हो एवं पर्यावरण अनुकूल विकल्पों जैसे कागज/पत्तों से बने दोने या कटलरी को प्राथमिकता दी जाय |
- एकल उपयोग प्लास्टिक उत्पाद के प्रयोग को रोकने एवं प्लास्टिक बैग के बजाय कपड़े के थैले का उपयोग करने मात्र से 375 मिलियन टन ठोस (प्लास्टिक) कचरे का उत्सर्जन बचाया जा सकता है
- चक्रीय अर्थव्यवस्था (सर्कुलर इकोनॉमी) का समुचित कार्यान्वयन वर्ष 2030 तक लगभग 14 लाख करोड़ रुपये की अतिरिक्त बचत उत्पन्न कर सकता है | वेस्ट /अपशिष्ट फेकने के पूर्व सोचें, ये किसी का संसाधन तो नहीं ...?
- अनुपयोगी इलेक्ट्रिक / इलेक्ट्रॉनिक उत्पाद को कचरे में फेकने से रुकें | इसके उपयुक्त निस्तारण हेतु इसे प्राधिकृत ई – वेस्ट रीसाइकलर को दें | प्राधिकृत ई-रीसाइक्लिंग इकाई में अनुपयोगी इलेक्ट्रिक / इलेक्ट्रॉनिक उत्पाद को देने मात्र से 0.75 मिलियन टन तक ई-कचरे का पुनर्चक्रण किया जा सकता है एवं ई-कचरे के विषम पर्यावरणीय दुष्प्रभाव से बचा जा सकता है
- बाहर जाते समय - सोचें कि क्या आपको वास्तव में परिवहन की आवश्यकता है - वह भी क्या व्यक्तिगत रूप से ? छोटी दूरी के लिए पैदल चलना पसंद करें, अथवा सम्भव हो तो कार पूल के रूप में संसाधन को साझा करें अथवा सार्वजनिक परिवहन पर विचार करें
- घरेलू स्तर पर कम से कम ठोस अपशिष्ट का उत्सर्जन करें और इनका प्थाक्कीकरण करें
- उपयोगी शेष खाद्य सामग्री आपके स्वयं प्रयास अथवा निकटस्थ सक्रिय स्वयं सेवी संस्थाओं की सहायता से समाज के वंचित वर्ग तक पहुंचाई जा सकती है | वहीं अनुपयोगी भोजन /खाद्य सामग्री को कंपोस्ट (वर्मी कम्पोस्ट) करने से 15 अरब टन भोजन को नष्ट होने से बचाया जा सकता है
- ध्यान रखें - उपयुक्त नल और शावर के उपयोग से पानी की खपत को 30 - 40% तक कम किया जा सकता है। एवं उपयोग में न होने पर नलों को बंद रखने मात्र से 9 ट्रिलियन लीटर पानी बचाया जा सकता है
- ट्रैफिक लाइट/रेलवे क्रॉसिंग पर कार/स्कूटर के इंजन बंद करने मात्र से 22.5 बिलियन kWh तक ऊर्जा की बचत हो सकती है
- परम्परागत बल्ब के स्थान पर CFL का उपयोग बिजली की खपत में प्रभावी कमी लाते हैं | उपयोग में न होने पर बिजली उपकरणों को बंद करें | स्टार रेटेड विद्युत उपकरणों के उपयोग को प्राथमिकता दें

हमारे द्वारा अपनी जीवन शैली की प्राथमिकताओं का उचित और पर्यावरण अनुकूल पुनर्निर्धारण समाज और पर्यावरण के प्रति हमारा दायित्व है |

INDIA NON JUDICIAL

Government of Uttar Pradesh

e-Stamp

Certificate No.	:	IN-UP88425235132068V
Certificate Issued Date	:	19 Apr 2023 11:20 AM
Account Reference	:	NEWIMPACC (SV)/ up14090104/ LONI/ UP-GZB
Unique Doc Reference	:	SUBIN-UPUP14090104712080867399 58V
Purchased by	:	LAKSHYA ENTERPRISES
Description of Document	:	Article 5 Agreement or Memorandum of an agreement
Property Description	:	Not Applicable
Consideration Price (Rs.)	:	
First Party	:	LAKSHYA ENTERPRISES
Second Party	:	BHARAT OIL AND WASTE MANAGMENT
Stamp Duty Paid By	:	LAKSHYA ENTERPRISES
Stamp Duty Amount(Rs.)	:	100 (One Hundred only)

FOR LAKSHAY ENTERPRISES

PROPRIETOR

This Agreement made on 19/04/2023 b/w LAKSHYA ENTER PRISES AND BHARAT OIL & WASTE MANAGEMENT LTD. for H/W Disposal.

For Bharat Oil & Waste Management Ltd.

Director

Statutory Alert

AGREEMENT

THIS AGREEMENT made on this 19 April 2023 between **LAKSHYA ENTERPRISES** a Company incorporated under Proprietorship Act, having its registered Office and its **Plant** located at **A-44, Roop Nagar Industrial Area, Loni,GHAZIABAD,201102** (hereinafter called as "FIRST PART" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors nominees and assigns of the First Part.

AND

M/s **Bharat Oil and Waste Management Ltd** (BOWML), a Company registered under the Companies Act 2015, having its registered office and corporate head office at 11, LGF, Community Center, East Of Kailash, New Delhi 110065 and its engineered common facility at Gata #672, Tahsil Akbarpur, Village Kumbhi, NH-2 Kanpur-Dehat, UP-209101, duly authorized by the Uttar Pradesh Pollution Control Board and having another Facility at Mauza Mukimpur, Roorkee-Laksar Road, Roorkee-247664, (Uttarakhand), duly authorized by the UEPPCB, Dehradun to treat, store and dispose of Hazardous Waste and/ or Bharat Oil Company (India) Registered (BOC) a partnership concern registered under the Partnership Act with its registered office at 169 Kailash Hills, New Delhi 110065, duly registered with Central Pollution Control Board, having its CHWTSDF at E-18, Site IV, Sahibabad Industrial Area, Ghaziabad, (UP), duly authorized by the UPPCB under the Environment Protection Act 1986 (for short the 'Act')and the Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016 and / or the E-Waste (Management) Rules 2016 (for short The Rules') as amended from time to time, represented by its Director/Partner, as the case may be (hereinafter called as "SECOND PART " which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors, nominees and assigns of the Second Part.

WHEREAS First Part is **engaged in Washing of Garments** and during the said process/ activities different types of wastes including Hazardous Waste are generated as per Annexure to this Agreement

AND WHEREAS the First Part desires that the Hazardous Waste, being generated at its production unit mentioned above, to be lifted, transported, treated, stored and disposed of, by utilizing the services of SECOND PART, as per the Pollution Control Board Authorization (list of Hazardous Wastes and their tentative quantity, which would be generated at the FIRST Part's plant located **A-44, Roop Nagar Industrial Area, Loni,GHAZIABAD,201102** AND WHEREAS the SECOND PART has represented and assured to First Part that it's Facility in Kanpur/Roorkee/Sahibabad is duly authorized by the concerned State Pollution Control Board and further capable of handling the Hazardous Waste generated at the First Part's premises.

AND WHEREAS First Part has agreed to avail the services of Second Part for treating the Hazardous Wastes, in its above-named facility/facilities.

Now, therefore, those present witnessed and it is hereby declared and agreed by and between the Parties as follows: -

1. The scope of services to be provided by Second Part is limited to lift, transport through authorized vehicles, treat, store and dispose of Hazardous Waste of First Part as per the guidelines prescribed by Pollution Control Board or First Part can also send HW to SECOND Part's Plant directly at its own cost.

For Bharat Oil & Waste Management Ltd.

Director

FOR LAKSHAY ENTERPRISES

PROPRIETOR

2 Second Part on receipt of written information from FIRST PART will plan and schedule lifting logistics of the Hazardous Wastes from the premises of FIRST PART within three (3) business days of receipt of such information. First Part shall ensure that Hazardous Wastes must be packed in proper & leak proof Bags or polythene Bags or containers for safe transportation

3 SECOND PART shall at all times comply with all the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 as amended from time to time framed by MoEF CPCB

4 SECOND PART shall indemnify and keep indemnified FIRST PART from all losses, damages and third-party claims after taking out HW from the premises of the First Part, in cases of non-compliance of statutory norms on the part of SECOND PART

5 FIRST PART shall keep ready the Hazardous Waste as per the mandate given to SECOND PART for collection, as it is a common facility catering to diverse wastes. SECOND PART shall follow Ministry of Environment & Forest, Central Pollution Control Board and State Pollution Board guidelines, future amendments and latest disposal technologies

6 FIRST PART shall ensure that the above Hazardous Waste must be packed & labeled as per rules in proper containers/bags so as to prevent any damage/spillage of the material during transit to SECOND PART factory. Rates are with Containers/Bags arranged by FIRST PART shall be of Metallic/PVC/Leak proof Bags and kept at the storage place under cover. Container/Bags weight will also be added in the weight of the material for disposal charges and these are not returnable basis

7 FIRST PART will provide labour and special Material Handling Equipments at its own cost to lift and load the containers at the FIRST PART premises in the vehicles for the transportation

8 FIRST PART has mandatory obligations to provide the entire process detail which leads to generation of Hazardous Waste and its tentative Quantity per month or year to SECOND PART for the purpose of determining the waste characteristics and to decide parameters for comprehensive analysis and process for disposal. However, it is specifically agreed between the parties that the process details provided by FIRST PART shall be kept confidential and Second Part shall not disclose it to any third party without the First Part's prior written consent. This clause shall survive termination for a period of 1 (One) year after the determination of this Agreement for any reason whatsoever

9 <u>FIRST PART must provide comprehensive Laboratory Analysis Report from a CPCB/Moef approved Laboratory of each type of Hazardous Waste for Finger Print Analysis.</u> These laboratories must be accredited as per the Environment (Protection) Act, 1986 and ISO 17025 through NABL system. In the event there are differences in the analysis results, FIRST PART may send its samples to a mutually agreed THIRD PARTY at their own cost. New Comprehensive Analysis Reports shall be provided by FIRST PART when there is a change in the Hazardous Waste characteristics, manufacturing process or change in the product mix etc. Reports must be provided to SECOND

For Bharat Oil & Waste Management Ltd.

FOR LAKSHAY ENTERPRISES

PROPRIETOR

PART prior to scheduling pick-up of Hazardous Waste. Reports shall be sent via electronic mail as well as by courier/speed post to SECOND PART As per CPCB Guidelines, HW Rules, comprehensive Laboratory Analysis Report from a CPCB/Moef approved Laboratory of each type of Hazardous Waste is mandatory for direct disposal pathway. Which if not provided by FIRST PARTY shall be performed by SECOND PARTY as per rate schedule of this agreement and FIRST PARTY agrees to pay the costs incurred in performing the test immediately upon demand

10 The comprehensive Analysis Report shall determine the disposal Pathway based on the Waste Characteristics and as per Waste Acceptance Criteria given to the FIRST PART and any other condition/solution that would help in safe disposal of Hazardous Waste. Disposal Pathway is mutually agreed between FIRST PART and SECOND PART to finalize the disposal base or basic USER CHARGES. The base User Charges are defined in Annexure to this Agreement.

11. FIRST PART will maintain and provide details of the HW as per the provisions in various Forms prescribed in the Rules These Forms can be provided by SECOND PART at cost or be printed by FIRST PART as per the formats given by the SECOND PART

12 If FIRST PART provides any false information/declarations or withholds information in relation to the provisions of Hazardous Waste rules and / or E-Waste rules any time during the term of this Agreement, all charges of Hazardous Waste during transportation, handling, treatment and disposal including post-disposal period shall remain vested at the responsibility of FIRST PART

13. The charges for collection, treatment, storage, and disposal facility (hereinafter called as User Charges) will be applicable to FIRST PART/SECOND PART as per Annexure

14 FIRST PART shall make payment for Waste Management Services to SECOND PART and vice-versa per User Charges and other terms and conditions as per payment terms outlined in Annexure

15. FIRST PART is responsible to segregate/store/accumulate/fill/load the Hazardous Waste in the container provided by FIRST PART in a neat and proper manner and so also, the container area should be accessible to SECOND PART's vehicle, to come and lift the Waste The Transporter/SECOND PART reserves the right to reject lifting of Hazardous Waste spilled over the ground and container whose exteriors are soiled by Hazardous Waste spillage due to leakage

16. In case, for any reason, the SECOND PART's Vehicle is sent back without giving the Hazardous Waste even after being requisitioned by FIRST PART, FIRST PART will have to pay actual transport charges to SECOND PART, **for a minimum load of one (1) MT.**

17. First Part shall at all times comply with all the provisions of the Acts and Rules from time to time in force and the Guidelines issued from time to time regarding handling of Waste involving the collection, storage, transportation and delivery thereof, and shall, without prejudice to the generality of the foregoing, also comply with all Environmental Protection Laws, Safety Laws and Regulations from time to time in force and the Rules, Regulations and Notifications made or issued thereunder

For Bharat Oil & Waste Management LLP

FOR LAKSHAY ENTERPRISES

PROPRIETOR

from time to time. In the event of First Part committing any breach of the terms of this clause of Agreement, FIRST PART shall indemnify and keep indemnified SECOND PART from and against all claims, payments, costs and actions of whatsoever nature brought against or sustained or incurred by SECOND PART arising from or as a result of such breach committed by FIRST PART in that behalf, provided these are proved.

18 FIRST PART & SECOND PART shall indemnify and keep indemnified each other at all times from and against all actions, suits, proceedings, claims, third party claims, costs, payments and expenses of whatsoever nature made or suffered or incurred by the other PART whether by reason of or by virtue of non-performance or non-observance or non-compliance by either PART, of any terms and conditions of this Agreement or of the relevant Act, the Rules and the Guidelines.

IT IS FURTHER HEREBY AGREED BY AND BETWEEN THE PARTIES AS UNDER:

19 This Agreement is valid for a period of five (5) years from date of signing this agreement

20. FIRST PART shall use the services of the SECOND PART during the period of this contract to dispose generated hazardous waste at agreed prices, while the agreement is in force. SECOND PART must legally and safely collect, transport, treat, dispose hazardous waste from FIRST PART during the agreed period per rates agreed while this Agreement is in force and payments made as per Agreement terms

21. If all the terms and conditions as per the clauses of this Agreement are adhered to by FIRST PART, it will be SECOND PART's responsibility to lift, transport, treat and dispose of the Hazardous Wastes generated by FIRST PART in accordance with prevailing Govt. Rules and FIRST PART shall not have any liability whatsoever in this regard.

22. The main mode of final disposal of HW shall be Incineration/Pre-Processing/Co-Processing/Land-filling and ash would be cemented and landfilled. The modes of disposal are dependent on the Hazardous Wastes' characteristics and FIRST PART shall not have any liability whatsoever in this regard.

23 The User Charges are subject to Annual Revision on the basis of Govt. of India Wholesale Price Index [WPI], (Commodities Index-All India) and once a quarter in the event of escalation of fuel costs and on major price escalations, escalation of fuel costs viz., Power Tariff, change in Disposal Technologies/Method, Wage Hike etc., to name a few. For the purpose of escalation in fuel cost, 30% of freight rate will be considered as fuel element of the cost.

24. SECOND PART reserves the right to cancel this Agreement if FIRST PART fails/refuses to pay the bills/dues as per the payment terms applicable to FIRST PART as mentioned herein and in Annexure. A Notice period of maximum Fifteen (15) days will be allowed from the date of lifting of material. If FIRST PART fails to pay in settlement of the Invoice, it shall be liable to pay interest @ 18% per annum and this may also result in cancellation of First Part's Membership, forfeiture of

For Bharat Oil & Waste Management Ltd.

Director

FOR LAKSHAY ENTERPRISES

PROPRIETOR

deposit and termination of this Agreement Repeated defaults and violation of payment terms will also result in cancellation of Membership and forfeiture of Membership deposit

25 Hazardous Wastes that require other alternate destruction technologies shall be handled at SECOND PART's facility However, the prices for such treatment techniques shall be determined on a case-to-case basis on their characteristics

26 Notwithstanding anything contained herein, neither Part hereto shall be liable for damages or have this Agreement terminated for any delay or default in the performance of such Part hereunder if such delay or default in performance derives from conditions beyond the reasonable control of such Part including but not limited to acts of God, fires, floods, extreme drought, riots, work stoppages embargoes governmental actions or damage to the plant or facility or any cause unavoidable or beyond the control of either part including any arbitrary ruling by the Government prohibiting the handling of the Waste or continuing domestic or international problems such as wars pandemic or natural calamities

27 This Agreement shall be deemed to represent the entire Agreement between the parties hereto regarding the subject matter hereof and shall supersede, cancel and replace all prior agreements or arrangements if any in this behalf, signed/entered into by and between the parties hereto

28. This Agreement is on principal to principal basis and nothing contained herein shall be deemed to constitute a partnership, joint venture or agency by and between the parties hereto

29 This Agreement may be modified or amended only by writing, duly executed by or on behalf of the parties hereto

30 Any terms and conditions of this Agreement may be waived at any time by the party that is entitled to the benefit thereof Such waiver must be in writing and must be executed by an authorized officer of such party A waiver on one occasion will not be deemed to be a waiver of a similar occasion or any other similar breach or non-fulfillment on a future occasion

31 If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future laws such provisions shall be deemed terminable and the remaining parts and provisions of this Agreement shall remain in full force and effect

32 Either Part shall have the right to terminate this Agreement upon giving 30 days written notice to the other Part with a reasonable cause

33. It is clearly and expressly understood by and between the parties that the activity of lifting transportation, treatment, storage and disposal of Hazardous Wastes is an independent contract and it does not come within the purview of the FIRST PART's manufacturing and selling activities. It is also clearly understood and confirmed by and between the parties that this contract is for performance of work and not for supply of Labour.

FOR LAKSHAY ENTERPRISES

For Bharat Oil & Waste Management Ltd.

PROPRIETOR

This Agreement is signed on this 19 April 2023 at New Delhi

For LAKSHYA ENTERPRISES

By its authorized Signatory
Name & Designation

For Bharat Oil & Waste Management Ltd
Bharat Oil Company (I) Regd

For Bharat Oil & Waste Management Ltd.

Director

Director /Partner
(Naresh Manglani)/Bharat Manglani

Witnesses
1 Name & Designation
(Mobile 9811164187 9
Sanjiv Kumar

1
(Name and Address)

2 Name & Designation
(Mobile 9312834369
Rajeem Agarwal.

2 Sanjeev Pal (ASM) 7428737555
(Name and Address)

Sanjeev pal@bharatoil com

Subhash yadav
GST No Not Registered
PAN No AORPY1983M
Phone 9911241739
Email. Yadavsc1739@gmail com
MSME:- UP-29-0062907

FOR LAKSHAY ENTERPRISE

PROPRIETOR

ANNEXURE-A

Waste Management & Handling Service Charge

This annexure is in conjunction with agreement signed between LAKSHYA ENTERPRISES and Bharat Oil & Waste Management Ltd on date 17 April 2023

First part WILL PAY AN AMOUNT OF Rs. 15000/- plus, application GST @ 18%, Total 17700/- to second part TOWARDS Non-Refundable Lifetime Membership Deposit which will be applicable for lifetime from the date of signing of this Agreement and membership will be renewed per without any extra charges.

Category – A: shall be paid by Second Part

S:NO	Type of Hazardous / Wastes	Category as per Authorisation under HW Rules or E-Waste Rules	Quantity/Annum (Specify Kg, Liter, MT, No)	Second Part Rates
1	Used Oil	Sch I - 5.1		Rs.3000/- (Three Thousand only) per drum
2	HW Empty Barrels 210 litters	Sch I - 33.1		Rs.200/-(Two Hundred) per dru

Used Oil Price is conditional, If Crude Oil Price on NYSE drops below USD31/barrel in any quarter of this agreement then Used Oil rates will be FOC - Free of Cost

a) Sr no.1 waste must comply with parameters as per Schedule V Part A of HW Rules, i e without water sludge
b) Less Than 210 Litter used oil BOWML will not pay to first part
c) Quoted rated are inclusive of GST. With container

01. USER CHARGES: FIRST PART will have to pay the following charges for the Waste Management Services provided by SECOND PART:

Category –B: shall be paid by FIRST PART

Collection, Treatment, Storage and Disposal Charges

S:NO	Name of Hazardous Wastes as per SPCB Authorisation of Industry	Category as per Authorisation under HW Rules or E-Waste Rules	Quantity/ Annum (Specify Kg Litter, MT, No)	Second Part Rates
1	Cotton Waste	5.2	100 KG	Rs. 20.00 per Kg (Rupees Twenty per kg only)
2	Sharp tools			Rs. 20.00 per Kg (Rupees Twenty per kg only)
3	Empty Containers	33.1	100 KG	Rs. 10.00 per Kg

For Bharat Oil & Waste Management Ltd.

FOR LAKSHAY ENTERPRISES

PROPRIETOR

				(Rupees Ten per kg only)
4	Filters	3.3	5 Nos	Rs. 45.00 per Piece (Rupees Forty Five per PIECE only)
6	E-Waste		90 KG	Rs. 22.00 per Kg (Rupees Twenty Two per kg only)
7	ETP Sludge	35.3	1000 KG.	Rs.10.00 per kg (Rupees Ten Per kg Only)
8	Transport			As Per Actual

- Quoted Rates are exclusive of all taxes.

Transportation cost shall be paid by the FIRSTPART TO SECOND PART for BOWML's,

02 TERMS & CONDITIONS:

GU

Additional MoeF Post-Closure Monitoring / Escrow Fund Charge

a) A charge of @ 5% on the total of above charges shall be applicable and levied on the actual waste quantities disposed for landfill (SLF) waste This charge is deposited in an escrow account to pay for any emergency remediation and post closure period of TSDF This is required by MoeF, Government of India and is applicable to all landfill waste (SLF)

b) A minimum billing of Rs 4000/-(Rupees Four thousand) Plus GST will be applicable for a load up to 200kg at a time and for load above 200kg, rates quoted below will be applicable and to be paid by FIRST PART

c) Further if there is no lifting of any Hazardous waste within a quarter, the minimum charges of Rs 4000 00 plus taxes is to be paid by the FIRST PART until termination of the agreement

d) GST or other taxes as applicable by GOI shall be paid by FIRST PART

e) FIRST PART shall ensure that the above Hazardous Waste must be packed in proper containers/gunny bags so as to prevent any damage/spillage of the material, during transit at FIRST PART plant Containers/Gunny bags arranged by FIRST PART shall be of metallic/PVC and kept at the storage place under cover

f) FIRST PART shall deliver their waste at SECOND PART Kanpur dehat/Sahibabad at its own cost If SECOND PART lifts the material transportation cost shall be borne by FIRST PART as quoted above. Loading is in scope of FIRST PART.

g) The transport charges are subject to revision if fuel prices are increased or decreased by Government beyond 10% from the price on the date of signing this Annexure.

h) The above transportation cost is for material of upto 1.1 MT/m3 density If density is lower than 1 1 MT/m3, the transport cost will be increased on pro-rata basis as the lighter waste material occupies more volume

For Bharat Oil & Waste Management Ltd.

FOR LAKSHAY ENTERPRISES

Director

PROPRIETOR

i) Leak-proof packing & proper correct labeling as per HW Rules will be ensured by FIRST PART for safe transportation Waste material shall be properly packed, sealed and labelled by the FIRST PART as per Rules.

j) A maximum of 4 hour will be allowed for lifting, loading & paperwork upon arrival of truck/container at site of the FIRST PART. FIRST PART agrees to pay Detention Charges of Rs 5000/- (Rupees five thousand) only, per day if the vehicle is held overnight.

k) As per Rule 8 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 as amended FIRST PART (Hazardous Waste Generator) needs to send/dispose the Hazardous Waste within 90 days from their Plant failing which agreement can be terminated without any notice

l) For Category (A) Payment shall be made by SECOND PART in favour of FIRST PART by Cheque/DD/NEFT within a week of receipt of FIRST PART Invoice. (Used/ Waste Oil should meet parameters as per Schedule V(A) of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 as amended)

m) For Category (B) FIRST PART shall pay to SECOND PART within a week of receipt of SECOND PART Invoice, by cheque/Demand Draft/ NEFT

n) NO CASH TRANSACTION WILL BE ENTERTAINED However, besides cheque, SECOND PART accepts payments under NEFT/ RTGS route also FIRST PART have to declare the quantity of hazardous waste generation on Quarterly/ Annual basis, while applying for fresh Membership

o) TAXES / LEVIES - All Government / Municipal Taxes / Duties/ Levies/ Octroi / Service Tax or GST / Tolls etc, as applicable from time to time, will be payable by FIRST PART There shall be NO goods / waste sent (or given) by FIRST PART to SECOND PART other than mentioned in this Annexure or mutually agreed & signed between the parties through an Annexure along with MoeF Approved Laboratory Test Reports of each waste type.

p) There shall be NO goods / waste sent (or given) by FIRST PART to SECOND PART other than mentioned in this Annexure or mutually agreed & signed between the parties through an Annexure along with MoeF Approved Laboratory Comprehensive Test Reports as per CPCB Guidelines of each waste type.

q) If FIRST PART sends goods which are not lawful, controlled substance, radio-active, bio-medical, explosive and/or not authorized/approved to be accepted by the SECOND PART (facility operator) by SPCB then the same shall be notified to SPCB and FIRST PART; The waste shall be refused and returned to the FIRST PART at full transport, handling cost payable by FIRST PART to SECOND PART.

r) If FIRST PART sends waste / goods which are as agreed upon yet not matching within +-10% the test analysis report provided by the FIRST PART OR IF FIRST PART sends waste/goods which are Hazardous Waste but NOT as agreed upon THEN - the SECOND PART will charge as decided by SECOND PART and FIRST PART agrees to pay immediately upon demand the Laboratory Comprehensive Test Analysis Charge, Transport, Storage, Disposal, Treatment Charge along with

For Bharat Oil & Waste Management Ltd.

FOR LAKSHAY ENTERPRISES

any applicable Government Taxes, MoeF Escrow Fee etc. SECOND PART will notify the FIRST PART, CPCB (HW Cell) and SPCB of the Exception. The complete liability, risk and costs of such goods/Wastes shall be on FIRST PART and the FIRST PART shall be liable to pay all the charges as demanded by the SECOND PART and FIRST PARTshall indemnify the SECOND PART for / during the transport, storage, unloading, treatment, disposal for the said waste

For LAKSHYA ENTERPRISES

FOR LAKSHAY ENTERPRISES

PROPRIETOR

(First Part)

For Bharat Oil & Waste Management Ltd/
Bharat Oil Company (I) Regd

For Bharat Oil & Waste Management Ltd.

Director

(Second Part)

07

14/04/2023

Govt. of India

FOR LAKSHAY ENTERPRISES

PROPRIETOR

ANNEXURE-B

This annexure is in conjunction with agreement signed between FIRST PART and SECOND PART on date 19 April 2023.

Lab Analysis Charge (Optional, Applicable when SECOND PART service is used)

Comprehensive Analysis Charge of Laboratory is Rs 12,500/- (Rupees Twelve thousand five hundred only) for complete analysis of hazardous waste as per CPCB Guideline (if ordered and applicable; excluding service tax/GST (extra) FIRST PART can / may use a Government Recognized or MoeF approved 3rd party laboratory and provide test reports to the TSDF, which are conducted with in the last 180 days. Comprehensive Analysis has to be carried out for any new waste streams or any change in manufacturing process as per Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016 and CPCB Guidelines. FIRST PART must inform the facility (SECOND PART) if any change in manufacturing process prior to waste pickup, disposal through SECOND PART

For LAKSHYA ENTERPRISES

FOR LAKSHAY ENTERPRISES

PROPRIETOR

(First Part)

For Bharat Oil & Waste Management Ltd &
Bharat Oil Company (India) Regd

For Bharat Oil & Waste Management Ltd.

Director

(Second Part)

FOR LAKSHAY ENTERPRISES

PROPRIETO

ISO 9001-2015
Quality Certified Company

BHARAT OIL & WASTE MANAGEMENT LTD.

(BOWML)

www.bharatoil.com

Passionately Protecting Mother-Nature Since 1978

Petroleum/Used/Waste Oil Refining, Common Hazardous, Municipal, Plastic & E-Waste Management Facilities,
Wholesale of Lubricating Oils, Laboratory Testing (Air, Soil, Water, Material),
Enterprise Waste Tracking & Management Software (WTS®)

MEMBERSHIP CERTIFICATE

M / s. Lakshya Enterprises

A-44, Roop Nagar Industrial Area, Loni Ghaziabad-201102, UP

is a registered member of our facility

BOWML/K/5130/23

Gata No. 672,706Cha Vill. Kumbhi,Akbarpur Road, NH-2 Kanpur-Dehat-209101, UP

for safe, legal & scientific Disposal of Hazardous Waste

Member # : BOWML/K/5130/23

Expiry Date : April 18, 2024

Scan & Verify

One may verify 'active' membership by calling
Bharat Oil & Waste Management Ltd. at
011-4100 0710, 2981 6466 or Email: sales@bharatoil.com

BOWML/K/5130/23

For Bharat Oil & Waste Management Ltd.

Pragati Rohtagi
Sales Cordinator
sales@bharatoil.com

Digitally Signed By Pragati Rohtagi
Date: 2023-04-24 11:25:02
IP 49.36.178.142
ID. 8LJxFrSedSUZ+eFdoV2/EQ==
Click here to E-verify

Authorized Signatory

For Bharat Oil & Waste Management Ltd.

Sunder K Kukreja
GM (Admin & Fin.)
sales@bharatoil.com

Digitally Signed By Sunder K Kukreja
Date: 2023-04-24 11:32:47
IP 49.36.178.142
ID. 7N0AXgiH3CkKNjATjm6w3g==
Click here to E-verify

Authorized Signatory

STRATEGIC ENVIRONMENT PROTECTION LABORATORY

*Membership is subject to the terms & conditions of agreement & may be terminated by BOWML, upon non-payment of dues / payment.

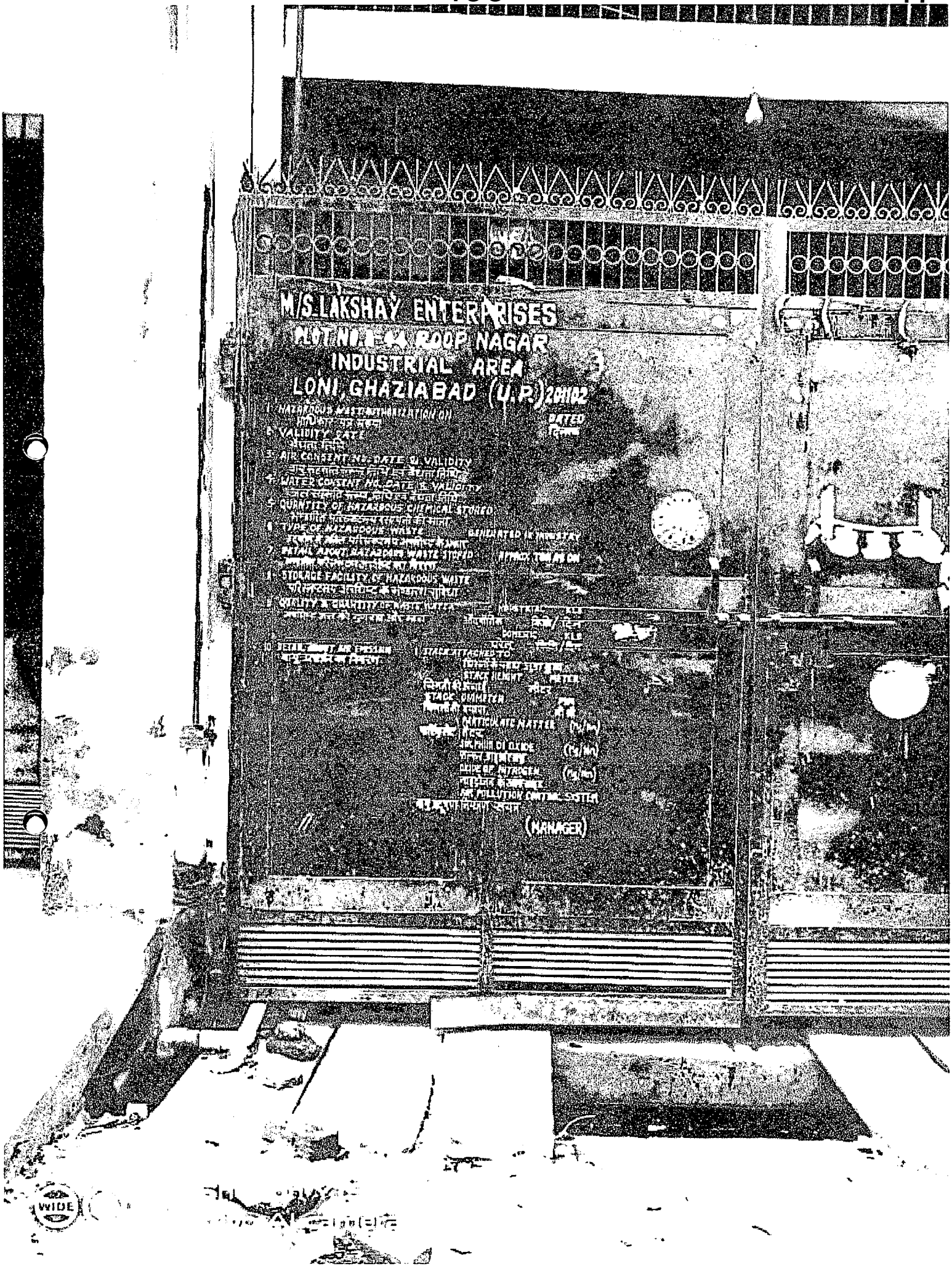
WASTE TRACKING & MANAGEMENT SOFTWARE WTS®

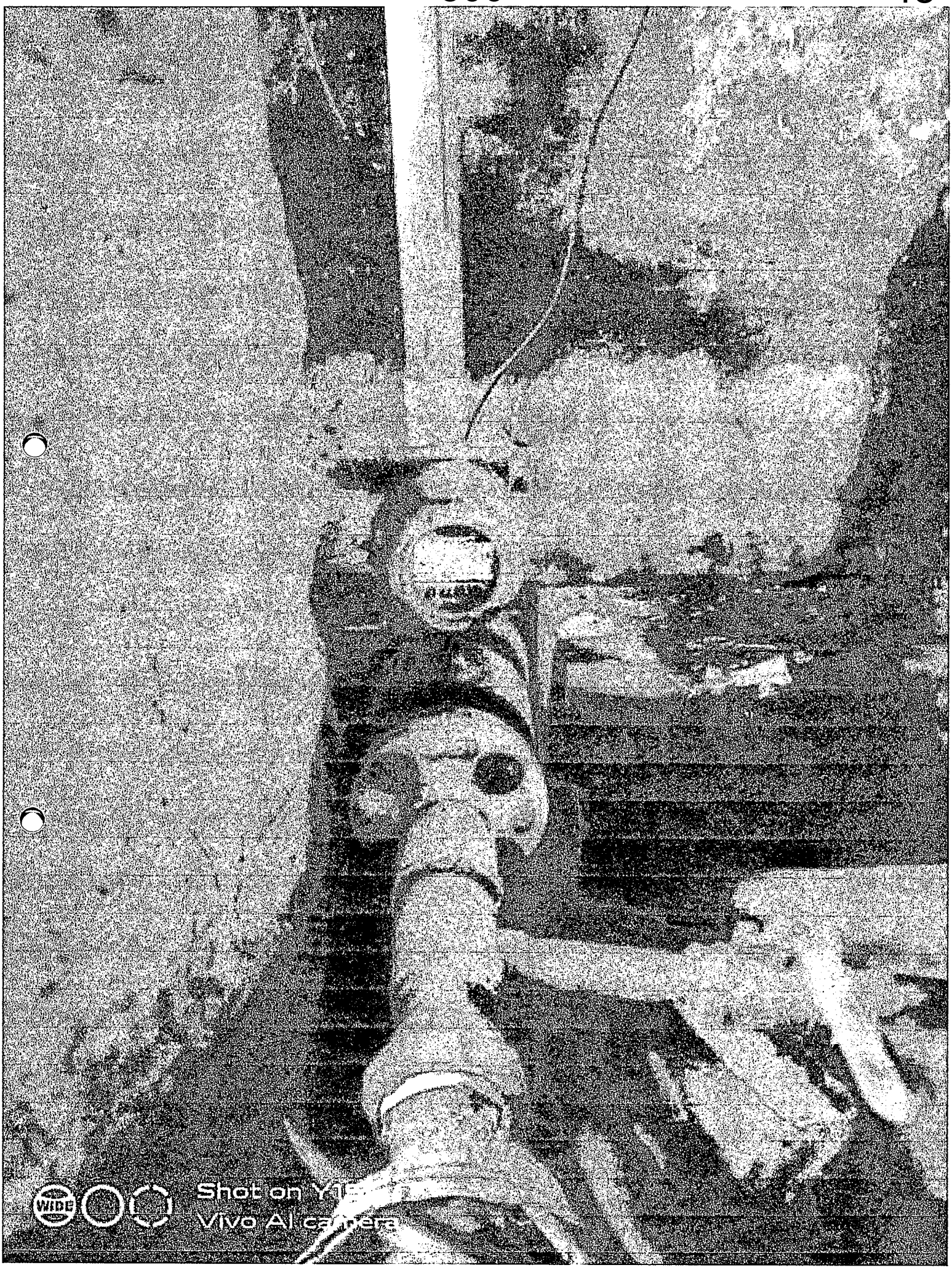
FORM 10 Copy for SPCB

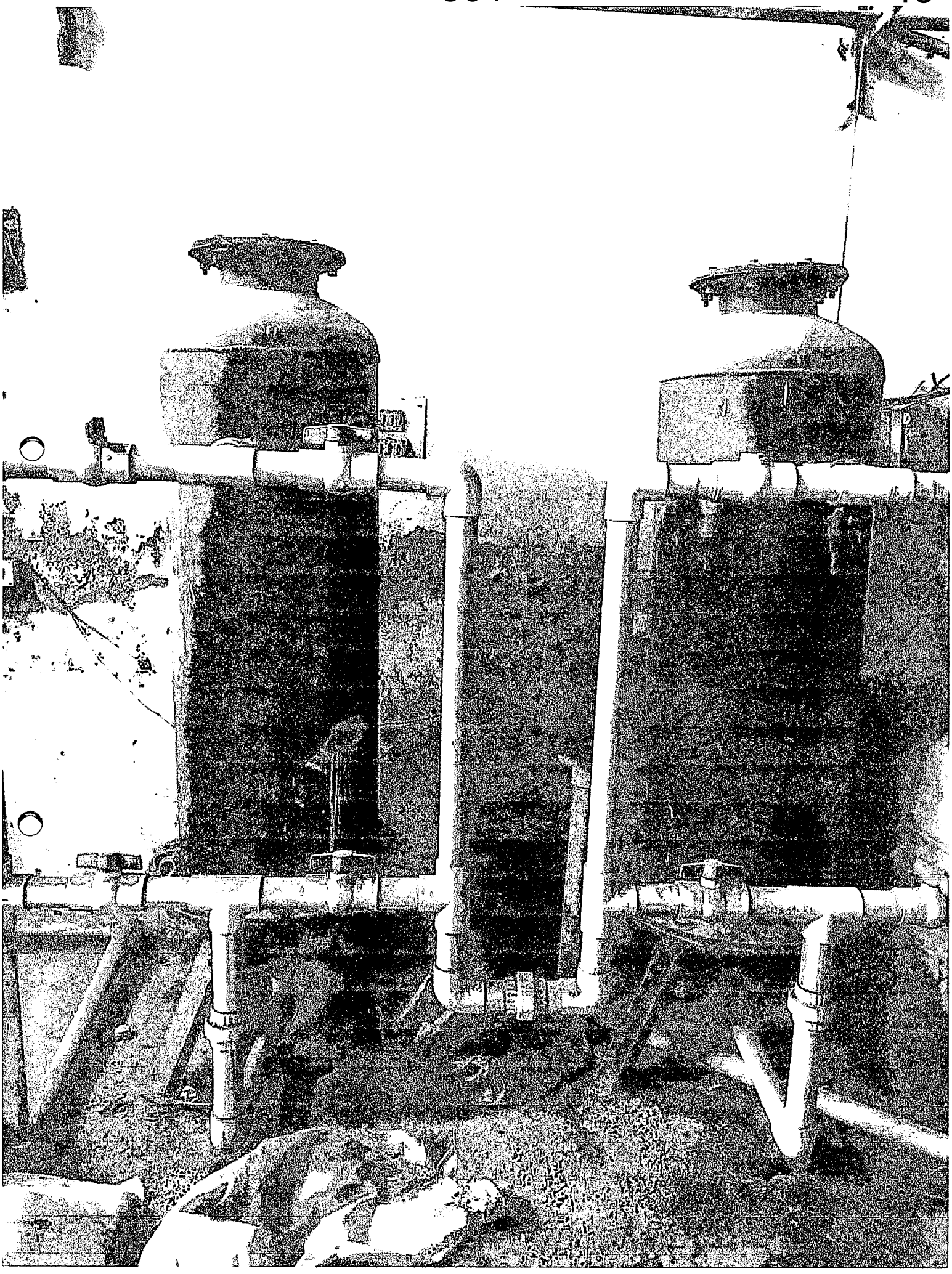
[See rule 19 (1)]

MANIFEST FOR HAZARDOUS AND OTHER WASTE S.No.: 83350

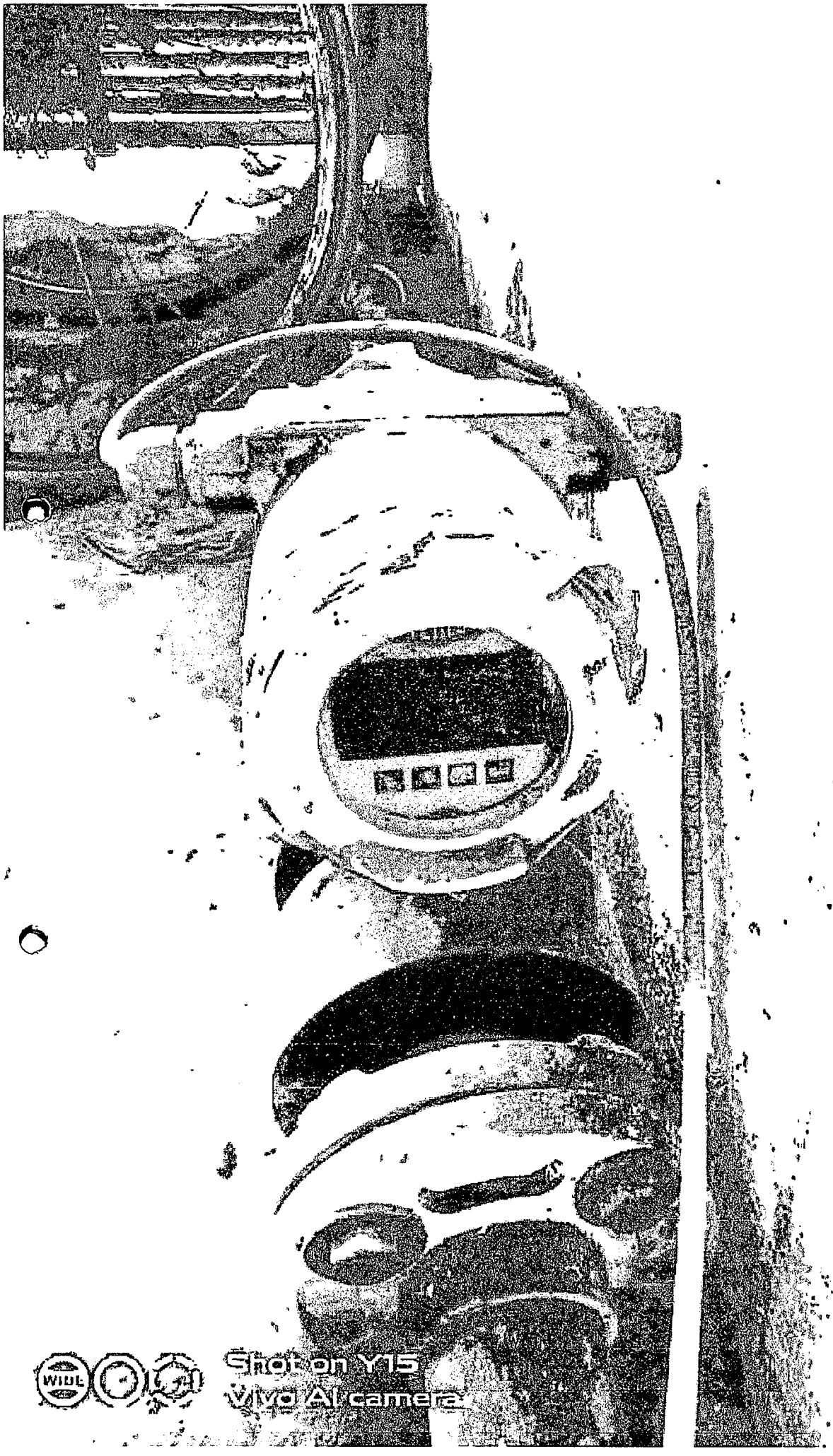
1 Occupier's Name & Mailing Address (including Phone No. and email)	Lakshay Enterprises A-44, Roop Nagar Indl Area Loni U.P.
2 Sender's Authonzation No	
3 Manifest Document No.	Challan No Dt 11-01-24
4 Transporter's Name & Address (including Phone No and email)	BOWML
5 Type of Vehicle	(Truck / Tanker / Special Vehicle)
6 Transporter's Registration	BOWML
7 Vehicle Registration No.	UP14 FT 6943
8 Receiver's Name & Mailing Address (including Phone No and email)	(I) BHARAT OIL COMPANY (I) REGL E-18, Site-IV, Sahibabad Industrial Area, Ghaziabad, UP-201010 Tel. : 9899692899 e-mail:sales@bharatoil.com
(II) BHARAT OIL & WASTE MANAGEMENT LTD. Mauza Mukimpur, Roorkee-Lakshar Road, Roorkee, Handwar - 247664 Uttarakhand Tel. : 8874087866 e-mail:sales@bharatoil.com	(III) BHARAT OIL & WASTE MANAGEMENT LTD. Gata# 672 & 706 Cha, Sikandra Road, NH-2, Kumbhi Vill., Tehsil Akbarpur, Kanpur Dehat, UP, Tel. : 8874207652, e-mail:sales@bharatoil.com
9 Receiver's Authorization No.	(I) 174437/UPPCB/Ghaziabad(UPPCBRO)/CTO/Both/GHAZIABAD/2023 Valid Upto: 31/12/2027
(ii) UKPCB/HO/Con-B-84(Vol-III)/2023/233 Valid Upto: 31/03/2028	(iii) 177172/UPPCB/KanpurDehat(UPPCBRO)/CTO/Both/KANPURDEHAT/2023 Valid Upto: 31/12/2027
10 Waste Description	ETP Sludge
11 Total Quantity No. of Containers	110 kg ..... m³ or MT ..... Nos.
12 Physical Form	(Solid/Semi-Solid/Sludge/Oily/Tarry/Slurry/Liquid)
13 Special Handling Instructions & Additional Information	Do not throw Drums from truck. In case of leakage/ seapage, use Washing soap at point of leak to stop its leakage.
14 SENDER'S CERTIFICATE	I hereby declare that the contents of the consignment are fully and accurately described above by proper shipping name and are categorised packed, marked, and labeled, and are in all respects in proper condition for transport by road according to applicable national government regulations.
Typed Name & Stamp : Signature :	Month 01 Day 11 Year 2024
15 Transporter Acknowledgement of Receipt of Waste	Month 01 Day 11 Year 2024
Typed Name & Stamp : Signature :	
16 Receiver's Certificate for Receipt of Hazardous and other Waste	Month 01 Day 11 Year 2024
Typed Name & Stamp : Signature :	


M/S LAKSHAY ENTERPRISES
PLOT NO. 4 ROOP NAGAR
INDUSTRIAL AREA
LONI, GHAZIABAD (U.P.) 201102
(MANAGER)


WIDE
Shot on Y1
Vivo AI camera




LAKSHAY
ENTERPRISES
ROOP NAGAR,
INDUSTRIAL AREA, LONI,
GHAZIABAD (201102)


WIDE
Shot on Y15
Vivo AI camera

Application for "Sample Analysis" by UPPCB laboratory

From ,
M/s Lakshya Enterprises
A-44, Roop Nagar Industrial Area, Loni
District: GHAZIABAD

To ,
The Member Secretary,
Uttar Pradesh Pollution Control Board,
Lucknow-226010

Sir,

I/We hereby apply for testing/analysis of sample : WasteWater for Self Purpose purpose. The sample proforma is being filled and selection of parameter is being done as per our requirement. The following parameters selected for analysis and the details of fees is as below

"Parameter charges & Fee Details"

Parameters	**Charges**
Color	150
pH	113
Oil_Grease	375
Dissolved Solids	188
Suspended Solids	188
BOD	1125
COD	656
Grab sampling/sample/place	1031

Transaction Id	**Payment Date**	**Transaction Status**	**payment mode**	**Ammount**
766690202	17/10/2023	Successful	Online	3826.0

Declaration

I hereby declare that the information given in this application is true and correct to the best of my knowledge and belief. In case any information given in this application proves to be false or incorrect, I shall be responsible for the consequences

Name: Subhash Chand
Email and Contact no: yadavsc1739@gmail.com ,9953564583
Address:
Address of Industry: A-44, Roop Nagar Industrial Area, Loni

Place:
Date:

Uttar Pradesh Pollution Control Board

Laboratory Information Management System

Ministry of Environment, Forest and Climate Change
Government of India

सत्यमेव जयते

On-line Payment Receipt

Receipt No.	231017166820518
Depositor Name	Subhash Chand
Bank Id.	NA
Bank Name.	
Application No.	23224118
Name and Address of Industry	Lakshya Enterprises, A-44, Roop Nagar Industrial Area, Loni, Loni, GHAZIABAD
Name of Regional Office	Ghaziabad
Applied For	WasteWater - Self Purpose - board
Payment Date	Tue Oct 17 17:52:33 IST 2023
Payment Details	
Total Amount Paid (Rs.)	3826.00
Transaction Status	Successfully Completed

REGIONAL LABORATORY GHAZIABAD, U.P. POLLUTION CONTROL BOARD
INDUSTRIAL AREA, SECTOR-16, VASUNDHARA, GHAZIABAD-201012, Phone: 0120-2800720

Certificate No. [illegible]

TEST REPORT: WATER LABORATORY (WASTE WATER)

Report No.	[illegible]
Report Issue Date	
Customer Ref. No.	
Any other information	

Sample Receiving Date	25.10.23
Date of Analysis Started	28.10.23
Date of Completion of Analysis	03.11.23
Date of Sampling	28.10.23

Sample collected by: B.K. Pandey, AEE & D.D. Verma, L.A

Name of Analysis: APHA, AWWA, WEF, 23 Edition, IS 3025 (Part-44) for BOD
Method of Sampling: Standard Methods for the Examination of Water and Wastewater, APHA, AWWA, and WEF, Ed 24th, 2023

Name of test Parameters	Standards prescribed by C.P.C.B	Unit	Result	Test Method
pH at 25°C	5.5-9.0	-	7.3	4500 H+ B Electrometric Method
Total Suspended Solids	100.0	mg/L	94.0	2540 D Total Suspended Solids dried at 103-105°C
Total Dissolved Solids	-	mg/L	1800.0	2540 C Total Dissolved Solids dried at 180°C
Total Solids	-	mg/L	1894.0	2540 B Total Solids dried at 103-105°C
B.O.D	30.0	mg/L	24.0	3 days 27°C IS 3025 (Part 44): 1993 Bi
COD	250.0	mg/L	198.0	Chemical Oxygen Demand 5220 B Open Reflux Method

Analysed By: [signature] 03/11/23 S.A.

Reviewed By

Authorized Signatory

Officer (Quality Manager)

(Regional Officer/Technical Manager)

Result in the test report relate only to the items tested. 2. The report shall not be reproduced except in full, without written approval of laboratory. 3. The test report pertains to the sample as received in Lab.

**********END OF REPORT**********

ANNEXURE R-2

(1996) 5 Supreme Court Cases 530 : 1996 Supreme Court Cases (Cri) 1038

(BEFORE DR A.S. ANAND AND K.T. THOMAS, JJ.)

Dr. BUDDHI KOTA SUBBARAO . . Applicant;

Versus

K. PARASARAN AND OTHERS . . Respondents.

Criminal Miscellaneous Petition No. 3830 of 1996 in Criminal Appeals Nos. 275-277 of 1993[†], decided on August 13, 1996

A. Penal Code, 1860 — Ss. 191, 192 and 193 — Criminal Procedure Code, 1973 — Ss. 340 and 195 — Giving of consent and authorisation as required by law for prosecution of an alleged offender — Allegation that the Attorney General of India and Chief Vigilance Officer gave consent and authorisation for prosecution of the applicant without due care and attention and without proper application of mind — Held, such allegations, even assuming to be true, do not amount to giving of false evidence or fabricating false evidence — Official Secrets Act, 1923, Ss. 3 and 6 — Atomic Energy Act, 1962, Ss. 18, 19 and 26(2)

The applicant was arrested in connection with offences under Sections 3 and 6 of the Official Secrets Act, 1923 and Sections 18 and 19 of the Atomic Energy Act, 1962. After obtaining consent of the Attorney General of India (Respondent 1) under Section 26(2) of the Atomic Energy Act and authorisation from the Chief Vigilance Officer of the Department of Atomic Energy (Respondent 2) for proceeding against the applicant and prosecuting him for various offences alleged against him, he was committed to the Court of Session to face the trial. The applicant was discharged for want of sanction under Section 197 CrPC. The applicant filed an application under Section 340 CrPC against the Attorney General of India and Chief Vigilance Officer on ground that the consent given by Attorney General of India and the 'authorisation' given by the then Chief Vigilance Officer were "false statements" as there was, according to him, no material before either of the two respondents, on the basis of which they could have given their 'consent' and 'authorisation' for his prosecution. It was alleged that Respondent 1 without "due care and attention" and without "sufficient and proper application of his mind", made 'false' statement to the effect that the record concerning technical material placed before him had 'satisfied' him that the provisions of Section 18 of the Atomic Energy Act, 1962 were attracted against the applicant and since the document dated 9-8-1988 (order conveying consent) containing the said "false statement" made by Respondent 1 was produced before the Court as evidence of the fulfilment of the mandatory requirements laid down under sub-section (2) of Section 26 of the Atomic Energy Act, 1962, it amounted to giving of "false evidence", attracting

proceedings under Section 340 CrPC against Respondent 1. It was further alleged that since the 'authorisation' issued by Respondent 2 to prosecute him was 'illegal' and made "without due care and attention" and "without any authority" Respondent 2 had committed 'perjury'. The applicant then stated that "the document containing the illegal 'authorisation' issued by Respondent 2 was produced as evidence of the fulfilment of the mandatory requirement prescribed under clause (b) of sub-section (1) of Section 26 of the Atomic Energy Act. The applicant also alleged that his 'prosecution' was "illegal and

unjustified" and that Respondents 1 and 2 also committed an offence of criminal conspiracy under Section 120-A of the Penal Code, 1860.

Held :

The applicant labouring under grave misconception both of law and facts and filed this petition unmindful of the scope of the provisions of Section 340 CrPC as well as of Sections 191, 192 and 193 IPC. By no stretch of imagination, on the basis of the allegations made in this application, can it be said that either Respondent 1 or Respondent 2 had "fabricated false evidence" or had given "false evidence", while giving 'consent' and 'authorisation' as required by law for the prosecution of the applicant in discharge of their official duties. A bare look at Sections 191, 192 and 193 IPC would show that the said provisions have no application to the case. Neither Respondent 1 nor Respondent 2 can be said to have given 'false' evidence while giving the 'consent' and 'authorisation' unless the expressions 'false' and 'fabricated' are used as an 'abuse' rather than in the legal sense as defined in Sections 191/192 IPC. How can the applicant allege that the recording of 'satisfaction' by the Attorney General was a "false statement' defies logic and sense. The accusation is reckless and bereft of any factual foundation. It deserves notice that neither the trial court nor even the High Court in its various orders made for or against the applicant or the Supreme Court while dealing with the orders arising in the case against the applicant, has returned any finding, even prima facie, that the 'consent' or the 'authorisation' given by Respondents 1 and 2 amounted to the giving of "false evidence" or "fabricating of false evidence". According to the applicant, the 'consent' was given by the then Attorney General of India "without due care and attention" and even if this submission is, for the sake of argument, accepted (though there is no basis for accepting the same), it cannot lead to an inference that the document conveying consent was a "false document" or that giving of 'consent' amounted to giving of "false evidence" or "fabricating false evidence" at any stage of judicial proceeding. There is no "prima facie" material on the record from which any inference may be drawn that either Respondent 1 or Respondent 2 gave "false evidence" or produced 'false' or 'fabricated' evidence in the court.

(Para 11)

State of Maharashtra v. *Dr Budhikota Subbarao*, (1993) 3 SCC 71 : 1993 SCC (Cri) 597; *State of Maharashtra* v. *Dr Budhikota Subbarao*, (1993) 3 SCC 339 : 1993 SCC (Cri) 901; *State of Maharashtra* v. *Dr Budhikota Subbarao*, (1993) 2 SCC 567 : 1993 SCC (Cri) 650, *referred to*

B. Practice and Procedure — Frivolous petition — Filing of frivolous and misconceived petitions deprecated — Judicial process, misuse of

No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions.

(Para 11)

H-M/T/16553/CR

Advocates who appeared in this case:

S.M. Jadhav, Advocate, for the Applicant/Opp. Party.

In person, for the Respondent.

A.M. Khanwilkar, Advocate, for Respondent 2.

Chronological list of cases cited ***on page(s)***

Page: 532

The Order of the Court was delivered by

DR ANAND, J.— We have heard the applicant who has appeared in person at length.

2. The applicant took voluntary retirement from the Indian Navy while holding the rank of a Captain on 27-10-1987. While on his way to USA on 30-5-1988, he was detained at the Sahar International Airport, Bombay. His suitcase was taken away from him and he was taken to

the Sahar Police Station and locked up. He was alleged to be carrying atomic and defence secrets with him. His successive applications for release on bail were rejected by the Metropolitan Magistrate, the Sessions Court and by the Bombay High Court. An order granting him bail on "medical grounds" was cancelled by this Court. After obtaining *consent* of the then Attorney General of India, Mr K. Parasaran (Respondent 1 herein) under Section 26(2) of the Atomic Energy Act, 1962 and *authorisation* from the Chief Vigilance Officer of the Department of Atomic Energy, Mr S.K. Bhandarkar (Respondent 2 herein) for proceeding against the applicant and prosecuting him for the various offences alleged against him, he was committed by the learned committing Magistrate to stand his trial in the Court of Session. Charges for offences including the offences under Sections 3 and 6, Official Secrets Act, 1923 and Sections 18 and 19 of the Atomic Energy Act, 1962 were framed against him. Against the order for framing of charges, the applicant unsuccessfully approached the Bombay High Court through Revision Application No. 96 of 1989. The applicant thereafter filed a criminal writ petition in the High Court once again inter alia calling in question the order for framing of charges and during the pendency of the writ petition, he filed a criminal miscellaneous petition in the High Court also alleging that the charges against him were vitiated by 'fraud' on the basis of the allegations made in the application, committed by the State and the public prosecutor. While matters rested thus, on 26-4-1991 the learned Sessions Judge trying the case, found that the prosecution had not obtained any sanction to prosecute the applicant and concluded that in the absence of sanction under Section 197 CrPC the trial was vitiated and accordingly discharged the applicant. The High Court while considering the criminal revision petition filed by the State against the order of discharge declined to interfere but found that since the case had travelled beyond the stage of Sections 227/228 CrPC an order of acquittal and not one of discharge was warranted and converting the order of discharge into an order of acquittal, dismissed the petition filed by the State on 12-10-1991. Though, technically the criminal writ petition filed by the applicant had thus been rendered infructuous, a learned Single Judge, after dismissal of the revision petition filed by the State, heard the writ petition and the miscellaneous petition and made an order passing strictures against the State and public prosecutor virtually accepting various pleas raised by the applicant alleging commission of 'fraud' by the special prosecutor and the State. The State of Maharashtra aggrieved by that order of the High Court, filed SLP (Crl.) No. 4178 of 1991

(Criminal Appeal No. 275 of 1993) in this Court. On 16-3-1993[‡], a Bench of this Court allowed the appeal and set aside the order dated 28-10-1991 passed in the criminal miscellaneous petition and the criminal writ petition and directed that in view of the order of discharge made in favour of the applicant by the trial court, criminal writ petition would stand dismissed as infructuous. The 'remarks' made by the learned Single Judge of the High Court against the State and the public prosecutor were also directed to be expunged. This Court expressed its disapproval of the manner in which the High Court had proceeded with the case.

3. The order of discharge made by the learned Sessions Judge and confirmed by the High Court was also challenged by the State through SLP (Crl.) No. 986 of 1992 (Criminal Appeal No. 276 of 1993)[‡‡]. A Division Bench of this Court dismissed the appeal against the order of discharge of the applicant, being Criminal Appeal No. 276 of 1993[‡]. This Court, however, opined that the order of discharge made by the trial court was sound and that the High Court fell in error in converting it into an order of acquittal. The order of acquittal was consequently converted into an order of discharge. The applicant was awarded costs of Rs 25,000 taking into consideration the mental suffering and financial loss suffered by him. While dismissing the appeal it was observed that: (SCC p. 351, para 10)

> "Since the appeal fails for non-compliance with Section 197 and the order discharging the accused has to be upheld we do not propose to examine the finding if authorisation under O.S. Act and A.E. Act to prosecute the accused was valid or not."

It transpires from the record that a review petition filed by the applicant inter alia to invite a finding on the validity of *consent* and *authorisation* to prosecute him and against the other 'findings' as recorded by this Court has also been since dismissed by this Court.

4. In Criminal Appeal No. 277 of 1993, arising out of SLP (Crl.) No. 987 of 1992[‡‡‡], this Court set aside the order of the High Court dated 14-10-1991 made in Criminal Miscellaneous Application No. 2260 of 1991. The short question which was considered by this Court in that appeal was whether the High Court was justified in allowing the application filed by the respondent for declaring that the charges framed by the Additional Sessions Judge against him by the order dated 24-7-1990/27-7-1990 were "null and void" and obtained by 'fraud' practised by the State and the public prosecutor. While elaborately dealing with the submissions made at the Bar, this Court

observed: (SCC p. 569, para 2)

> "Merits or otherwise of the application, alleging fraud against the State, apart, what has left us completely surprised is not so much the entertaining of the application filed by the accused, for declaration that the charges framed against him were nullity having been procured by

fraud, as the procedure adopted by the learned Single Judge of granting the prayer merely for failure of the State to file any reply by way of counter-affidavit than by recording any finding that the State was guilty of procuring the order framing the charges by fraud. One of the objections raised by the State was that since the High Court by its order passed on 25-3-1991/26-3-1991 in Criminal Writ Petition No. 966 of 1990 had specifically held that the question of framing charge had become final, therefore, it could not be reopened, cannot be said to be without substance as the Division Bench had clearly held that it was not open to go behind the order passed by the learned Single Judge on 3-4-1990/4-4-1990 directing that the charges be framed against the accused not only under Section 3 but under Section 5 as well. Nor can any exception be taken to the finding of the Bench that the said order could not be said to have been passed without jurisdiction inasmuch as the learned Single Judge had jurisdiction to decide the revision application preferred under the provisions of the Code. Even the question of fraud raised by the accused was negatived by the Division Bench and it was held that it was not capable of being gone into as it did not form part of the substratum of the case of the prosecution and was not germane to the question of deciding as to whether he was entitled to be discharged or not."

The Court then opined that the allegation that the framing of charge was procured by 'fraud' was made without necessary foundation for the charge of fraud having been laid in the petition. The Bench also noticed that in paragraphs 4 to 8 (of his application) the applicant had culled out sentences from one or the other order rendered for or against him by different courts and on that basis had claimed that State either knowingly did not place correct facts to substantiate the observations made therein or deliberately concealed the truth and made fraudulent submissions thereby inducing the trial court to frame the charges. The Bench quoted in extenso paragraphs 4, 5 and 7 of the application in that behalf and observed: (SCC p. 572, para 6)

> "We must confess our inability to appreciate the worth of such

averments to establish fraud. Legal submissions cannot be equated to misrepresentation. *In our opinion the pleadings fell short of legal requirements to establish fraud. Various sentences extracted from different judgments between the accused and the State in various proceedings could not give rise to an inference either in law or fact that the State was guilty of fraud. Suffice it to say that it was complete misapprehension under which the accused was labouring and it was indeed unfortunate that the High Court not only entertained such application but adopted a course which amounted to reviewing and setting aside orders of his predecessor without sufficient material* and accept the claim that all earlier judgments were liable to be ignored under Section 44 of the Evidence Act as the proceedings were vitiated by fraud. We are constrained to say that the learned Judge not only

committed an error of procedure but misapplied the law."

(emphasis supplied)

5. The appeal filed by the State [Criminal Appeal No. 277 of 1993 arising out of SLP (Crl.) No. 987 of 1992][‡‡‡] was allowed on 16-3-1993 and the order made by the High Court on 14-10-1991 in Criminal Miscellaneous Application No. 2260 of 1991 was set aside and the application of the applicant for declaring the order dated 24-2-1990/27-2-1990 framing the "charges against him as vitiated by fraud" was dismissed.

6. We have referred to the history of the case only to show how the applicant has, thanks to the permissiveness of the judicial system, filed one petition after another to question the validity of the charges framed against him even after an order of discharge came to be made in his favour. The present petition under Section 340 CrPC against the then Attorney General of India and the Chief Vigilance Officer of the Department of Atomic Energy also appears to be an attempt to carry on with the 'litigation', undaunted by the orders made by this Court in Criminal Appeals Nos. 275-277 of 1993 on 16-3-1993[‡‡‡].

7. The main grounds on which this petition under Section 340 CrPC is founded are that according to the applicant, the 'consent' given by the then Attorney General of India (Respondent 1) and the 'authorisation' given by the then Chief Vigilance Officer (Respondent 2) were "false statements" as there was, according to him, no material before either of the two respondents, on the basis of which they could have given their 'consent' and 'authorisation' for his prosecution. The

applicant has alleged that Respondent 1 without "due care and attention" and without "sufficient and proper application of his mind", made 'false' statement to the effect that the record concerning technical material placed before him had 'satisfied' him that the provisions of Section 18 of the Atomic Energy Act, 1962 were attracted against the applicant and since the document dated 9-8-1988 (order conveying consent) containing the said "false statement" made by Respondent 1 was produced before the Court as evidence of the fulfilment of the mandatory requirements laid down under sub-section (2) of Section 26 of the Atomic Energy Act, 1962, it amounted to giving of "false evidence", attracting proceedings under Section 340 CrPC against Respondent 1. It is also alleged that by giving his 'consent' Respondent 1 had "created falsity" for the Department of Atomic Energy to give its "illegal authorisation" on behalf of the Central Government and that these actions of Respondent 1 also amounted to fabricating "false evidence" and producing "false documents" before the court. So far as the 'authorisation' given by the Chief Vigilance Officer is concerned, the applicant alleges that the Chief Vigilance Officer (Respondent 2) "without due care and attention", and "without any authority", had signed and issued letter No. JS(B)/CVO/16/88 dated 16 -8-1988 giving 'authorisation' on behalf of the Central Government to prosecute the applicant "in camera" for the alleged contravention of Sections 18 and 19 of the Atomic Energy Act and since the 'authorisation' issued by Respondent 2 to prosecute him was 'illegal' and made "without due care and attention" and "without any authority" Respondent 2 had committed

'perjury'. The applicant then states that "the document containing the illegal 'authorisation' issued by Respondent 2 was produced as evidence of the fulfilment of the mandatory requirement prescribed under clause (*b*) of sub-section (1) of Section 26 of the Atomic Energy Act. It had caused a 'circumstance' for the Magistrate to entertain the *erroneous* opinion that the bar for taking cognizance placed by clause (*b*) of sub-section (1) of Section 26 had been overcome thereby making him take cognizance and issue process against the applicant, which action had "deprived the life and liberty" of the applicant.

8. The applicant also alleges that his 'prosecution' was "illegal and unjustified" and that Respondents 1 and 2 also committed an offence of criminal conspiracy under Section 120-A of the Penal Code, 1860.

9. The applicant has made the following prayers in his application:

(1) That this Hon'ble Court may be pleased to:

(*i*) record a finding that it is expedient in the interests of justice that an enquiry should be made into the offences punishable under Sections 193, 195 and 196 and also Section 120-B of the Penal Code, 1860 and the abetment thereof which appear to have been committed by Respondents 1 and 2 abovenamed;

(*ii*) make a complaint thereof in writing; and

(*iii*) send it to a Magistrate of the first class having jurisdiction.

(2) That this Hon'ble Court may be pleased to direct the Magistrate who is to act upon the complaint of this Court, that if during the enquiry it is found that there are others whose actions or omissions would amount to any of the offences mentioned in Section 195(1)(*b*) of the Criminal Procedure Code or any other offences, to proceed against them also according to law.

(3) That this Hon'ble Court may be pleased to direct the Registrar of the Supreme Court to take necessary action and ensure that the sanction under Section 197 of the Criminal Procedure Code from the Central Government is forwarded to the Magistrate concerned to prosecute Respondents 1 and 2, as per the complaint made by this Court under Section 340 of the Criminal Procedure Code.

10. Leaving out unnecessary and repetitive submissions, what can be culled out from the averments made by the applicant in the memorandum of the present application, is that Respondent 1 and Respondent 2 had given their 'consent' and 'authorisation' for his prosecution on behalf of the Central Government "without due care and attention" and "without proper application of mind" and had thereby given "false evidence", and "fabricated false evidence" for use in judicial proceedings, which evidence became the basis of his prosecution.

11. The applicant, it appears to us is labouring under grave misconception both of law and facts and has filed this petition unmindful of the scope of the provisions of Section 340 CrPC as well as of Sections 191, 192 and 193 IPC. By no stretch of imagination, on the basis of the

allegations made in this application, can it be said that either Respondent 1 or Respondent 2 had "fabricated false evidence" or had given "false evidence", while giving 'consent' and 'authorisation' as required by law for the prosecution of the applicant in discharge of their

official duties. A bare look at Sections 191, 192 and 193 IPC would show that the said provisions have no application to the case. Neither Respondent 1 nor Respondent 2 can be said to have given 'false' evidence while giving the 'consent' and 'authorisation' unless the expressions 'false' and 'fabricated' are used as an 'abuse' rather than in the legal sense as defined in Sections 191/192 IPC. How can the applicant allege that the recording of 'satisfaction' by the Attorney General was a "false statement' defies logic and sense. The accusation is reckless and bereft of any factual foundation. It deserves notice that neither the trial court nor even the High Court in its various orders made for or against the applicant or this Court while dealing with the orders arising in the case against the applicant, has returned any finding, even prima facie, that the 'consent' or the 'authorisation' given by Respondents 1 and 2 amounted to the giving of "false evidence" or "fabricating of false evidence". According to the applicant, the 'consent' was given by the then Attorney General of India "without due care and attention" and even if this submission is, for the sake of argument, accepted (though there is no basis for accepting the same), we are of the opinion that it cannot lead to an inference that the document conveying consent was a "false document" or that giving of 'consent' amounted to giving of "false evidence" or "fabricating false evidence" at any stage of judicial proceeding. There is no "prima facie" material on the record from which any inference may be drawn that either Respondent 1 or Respondent 2 gave "false evidence" or produced 'false' or 'fabricated' evidence in the court. Considering the submissions of the applicant, stripped to their bare essentials, the factual matrix on which allegations have been made against Respondents 1 and 2 do not attract the provisions of Section 191, 192 or 193 IPC. The filing of the present application appears to us to be an effort to get 'reopened' the case even after this Court decided Criminal Appeals Nos. 275-277 of 1993 on 16-3-1993 and dismissed the review petition also more than three years ago. Finality must attach to some stage of judicial proceedings. The course adopted by the applicant is impermissible and his application is based on misconception of law and facts. No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner *as he wishes*. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions. After giving our careful consideration to the submissions made at the Bar as well as those contained in the memorandum of the application, we are of the opinion that this application is misconceived, untenable and has no merits whatsoever. It is accordingly dismissed.

———

† From the Judgment and Order dated 14-10-1991 and 12-10-1991 of the Bombay High Court

in Crl. W.P. No. 180 of 1991 and C.R.A. No. 123 of 1991

‡ *State of Maharashtra* v. *Dr Budhikota Subbarao*, (1993) 3 SCC 71 : 1993 SCC (Cri) 597

‡‡ *State of Maharashtra* v. *Dr Budhikota Subbarao*, (1993) 3 SCC 339 : 1993 SCC (Cri) 901

‡‡‡ *State of Maharashtra* v. *Dr Budhikota Subbarao*, (1993) 2 SCC 567 : 1993 SCC (Cri) 650

(1995) 1 Supreme Court Cases 242

(BEFORE K. RAMASWAMY AND N.G. VENKATACHALA, JJ.)

NOORDUDDIN . . Appellant;

Versus

Dr. K.L. ANAND . . Respondent.

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Civil Appeal No. 7466 of 1994[†], decided on October 6, 1994

Civil Procedure Code, 1908 — Ss. 11 and 151 and Or. 21, Rr. 97(1), 98, 100, 101, 103 (as amended in 1976) & 104 — Res judicata — Application under Or. 21, Rr. 97, 98 and S. 151 — Whether on facts barred by earlier writ petition and suit — M, B, N, R and W being descendants of same ancestors — M and B migrating to Pakistan, their properties declared as evacuee properties and ultimately sold to K — R and W unsuccessfully challenging the declaration and the sale in a writ petition, in which N, although impleaded as a respondent, neither any relief sought against him nor any adverse finding recorded against him — Meanwhile K's suit against R and W for possession of the properties purchased, finally decreed by the appellate court, but resisting execution and delivery of possession, the appellant, son of N, filing an application under Rr. 97 and 98 read with S. 151 asserting that he was in possession of a particular portion of the land as owner of his share in the ancestral property and that the same neither vested in the Custodian nor was sold to K — In the circumstances of the case, the said application, held, not barred by the earlier writ petition of R and W or by K's suit — Proper course for the court in such a case stated — Displaced Persons (Compensation and Rehabilitation) Act, 1954, S. 20 — Administration of Evacuee Property Act, 1950, Ss. 7 and 8

Held :

Admittedly, neither the appellant nor his father was a party to the suit or appeal. Therefore, the decree per force does not bind him. In the writ proceedings, though N was impleaded as one of the respondents, no relief was claimed against him nor a finding adverse to him has been recorded. Under these circumstances, when the appellant has been claiming right, title and interest in a specific portion of land from which he was sought to be dispossessed in execution of the decree by K (respondent herein) in respect of the land sold to K, the executing court necessarily

has to go into the question whether the former land is part of the latter and if so, whether the respondent while executing the decree trenched upon his property and sought to dispossess him. The appellant's possession, pending adjudication, needs to be protected by interim orders. The court is enjoined to adjudicate the appellant's claim and record a finding, allowing or rejecting the same.

(Para 10)

Appeal allowed

H-M/13751/C

Advocates who appeared in this case:

B.D. Sharma, Advocate, for the Appellant;

Rajiv Sawhney, Senior Advocate (Sanjeev Anand, R.P. Wadhwani and Ms Kajol Chandra, Advocates, with him) for the Respondent.

ORDER

1. Leave granted.

2. The appellant's father Nanu, Rehmatullah and Wazu are brothers. Munshi and Banda were their cousins. Munshi and Banda had migrated to Pakistan and their properties were declared as evacuee properties. By proceedings dated 12-3-1956, the competent authority had passed an order separating the respective shares held by the evacuees, Munshi and Banda as well as the father of the appellant, Rehmatullah and Wazu and allotted specific items to Nanu. At an auction held on 14-4-1967 of the evacuee

properties, the respondent Dr K.L. Anand had become the highest bidder and sale certificates issued on 26-9-1968, are as follows:

"CERTIFICATE OF SALE

(FREEHOLD PROPERTIES)

Rule 90(15)

This is to certify that Shri K.L. Anand, s/o Shri Parshotam Dass Anand having given the highest bid of Rs 4250 (Rupees Four thousand two hundred and fifty only) at sale by public auction held in pursuance of the powers conferred upon me under Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) on 14-4-1967 of the property described in the Schedule and his bid having been accepted and the value thereof having been paid by him in cash/by adjustment of compensation due on his and his associate(s) claim(s) has been declared the purchaser of the said property in shares as mentioned below with effect from 14-6-1968.

Given under my hand and seal of my office this day of September

26, 1968.

Schedule

Shares

Property Khasra Sakni No. 13

Full

Village Kalu Sarai, New Delhi.

bounded as under:

East : Mosque Gali
West : House of Shri Rehmatullah
North : Khasra Sakni No. 14
South : Gali

Sd/-
Signature
Designation : Managing Officer/Asstt.
Custodian, New Delhi.

Shri K.L. Anand, s/o Shri Parshotam Dass Anand

Shop No. 176, Vinay Nagar,

New Delhi.

Copies to:

1. Sub-Registrar, Kashmere Gate, Delhi.
2. Assistant Accounts Officer,
3. Central Board of Revenues, New Delhi.
4. Municipal Corporation of Delhi.

Signature
Designation.

* * *

CERTIFICATE OF SALE

(FREEHOLD PROPERTIES)

Rule 90(15)

This is to certify that Shri K.L. Anand, s/o Shri Parshotam Dass having given the highest bid of Rs 6050 (Rupees Six thousand and fifty only) at sale by public auction held in pursuance of the powers conferred upon me under Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) on 14-4-

1967 of the property described in the Schedule and his bid having been accepted and the value thereof having been paid by him in cash/by adjustment of compensation due on his and his associate(s) claim(s) has been declared the purchaser of the said property in shares as mentioned below with effect from 14-6-1968.

Given under my hand and seal of my office this day of September 26, 1968.

Schedule

Shares

Property Khasra Sakni No. 14

Full

Village Kalu Sarai, New Delhi.

bounded as under:

East : Mosque and Gali
West : House of Shri Wazu
North : Agricultural land
South : Khasra Sakni No. 13

Sd/- M.L. Vij
Signature
26-9-1968
Designation : Managing Officer/Asstt. Custodian,
Office of the Regional
Settlement Commissioner,
New Delhi.

To

Shri K.L. Anand
Shop No. 176, Vinay Nagar,
New Delhi.

* * *

No. RSCD(MO)/Auc/PN/Khasra No. 13/Kalu Sarai/
D/5178

Govt. of India,

Ministry of Labour, Employment and Rehabilitation,

Office of Regional Settlement Commissioner (MW),

Jamnagar House, New Delhi.

Corrigendum

25-10-1969

Subject : Regarding Khasra Sakni No. 13,

Village Kalu Sarai, New Delhi.

In the certificate of sale executed on 26-9-1968 in favour of Shri K.L. Anand, s/o Shri Parshotam Dass in respect of Khasra Sakni No. 13, Village Kalu Sarai, New Delhi, the boundaries may be read as under:

East : House of Shri Rehmatullah

West : Mosque and Gali

North : Khasra Sakni No. 14

South : Gali

Given under my hand and seal of my office this day 24-10-1969.

Sd/- M.L. Vij
Managing Officer/Asstt. Custodian

To,

Shri K.L. Anand, son of Shri Parshotam Dass
Shop No. 176, Vinay Nagar,
New Delhi.

Copy to : Sub-Registrar, Asaf Ali Road, New Delhi.

(Managing Officer)

* * *

No. RSCD/MO(AUC)/PN/Kh. No. 14/Kalu Sarai/
D/5180
Govt. of India,
Ministry of Labour, Employment and Rehabilitation,
Office of Regional Settlement Commissioner (MW),
Jamnagar House, New Delhi.

Corrigendum

25-10-1969

Subject : Regarding Khasra Sakni No. 14,
Village Kalu Sarai, New Delhi.

In the certificate of sale executed on 26-9-1968 in favour of Shri K.L. Anand son of Shri Parshotam Das in respect of Khasra Sakni No. 14, Village Kalu Sarai, New Delhi, the boundaries may be read as under:

East : House of Shri Wazu

West : Mosque and Gali

North : Agricultural land

South : Khasra Sakni No. 13

Given under my hand and seal of my office this day of October 24, 1969.

Sd/- M.L. Vij
Managing Officer

To,

Shri K.L. Anand,
Shop No. 176, Vinay Nagar,
New Delhi.

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Copy to : Sub-Registrar, Asaf Ali Road, New Delhi.

(Managing Officer)"

3. Thus, the properties bearing Khasra Sakni Nos. 13 and 14 were confirmed in favour of the respondent. Rehmatullah and Wazu challenged the said sales in WP No. 960 of 1969 in Delhi High Court contending that the properties sold pursuant to the declaration of those properties being evacuee on 6-2-1956 were not, in fact, correct; they had interest in the sold properties and that, therefore, the sale made in favour of the respondent was illegal. The writ petition came to be dismissed by the learned Single Judge which was affirmed by the Division Bench in LPA No. 95 of 1978 by order dated 14-9-1982. That order had become final. Therein, though Nanu was impleaded as 5th respondent, no relief of any sort was claimed against him nor any finding adverse to him in that behalf was recorded. In the meanwhile, the respondent had filed Suit No. 270 of 1970 in the District Court, Delhi, against Rehmatullah and Wazu for possession of the properties bearing Khasra Sakni Nos. 13 and 14 as indicated hereinbefore. Though the suit was dismissed, on appeal in RFA No. 305 of 1986, the Division Bench of the Delhi High Court decreed the suit for possession and the decree had become final.

4. Therefore, now in execution, the respondent sought to take possession of the properties in Khasra Sakni Nos. 13 and 14. Resisting the execution and delivery of possession, the appellant made an application under Order 21, Rules 97 and 98 read with Section 151 of CPC contending that his father and members of his family had not migrated to Pakistan though the Custodian had declared certain ancestral properties to be evacuee properties of Munshi and Banda

which were later sold to the respondent under Khasra Sakni Nos. 13 and 14; Dr Anand has obtained collusive decree against others; the land was not demarcated; the land bears Khasra No. 179 and in accordance with the Chijra Akshi, it is in his possession as an owner by virtue of his share in the ancestral property separated by the competent authority which never vested in the Custodian nor was it sold to the respondent.

5. The executing court dismissed the application on the ground that the dispute was adjudicated by the High Court in RFA No. 305 of 1986 and that, therefore, the claim is no longer tenable. On revision, in the impugned order dated 11-7-1994, the learned Single Judge dismissed the revision holding that the controversy was concluded in WP No. 960 of 1969 wherein the appellant's father was arrayed as respondent and that, therefore, he cannot make the objections. Hence this appeal.

6. The question, therefore, is whether the executing court and the High Court had properly appreciated the scheme under Order 21, Rule 97 and declined to entertain and adjudicate the claim of the appellant?

7. Order 21, Rules 97, 98, 100, 101, 103 and 104 provide thus:

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"97. *Resistance or obstruction to possession of immovable property.*— (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

98. *Orders after adjudication*.— (1) Upon the determination of the questions referred to in Rule 101, the court shall, in accordance with such determination and subject to the provisions of sub-rule (2);—

(*a*) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(*b*) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the court is satisfied that the resistance or obstruction was occasioned without any just cause

by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment-debtor or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

100. *Order to be passed upon application complaining of dispossession*.— Upon the determination of the questions referred to in Rule 101, the court shall, in accordance with such determination, —

(*a*) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(*b*) pass such other order as, in the circumstances of the case, it may deem fit.

101. *Question to be determined*.— All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with the application and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

103. *Orders to be treated as decrees.*— Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as is if it were a decree.

104. *Order under Rule 101 or Rule 103 to be subject to the result of pending suit*.— Every order made under Rule 101 or Rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under Rule 101 or Rule 103 is made has sought to establish a right which he claims to the present possession of the property."

8. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code Amendment Act, 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.

9. Adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to mete out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Any weakening like (*sic*) in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment in the minds of the people of the very law and courts. The rules of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and almameter (*sic*) for the mankind. It is a foundation for orderly human relations. Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice. The court has, therefore, to

wisely evolve its process to aid expeditious adjudication and would preserve the possession of the property in the interregnum based on factual situation. Adjudication under Order 21, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution.

10. The question is whether the executing court was right in dismissing the application on the ground that the dispute was adjudicated in RFA No. 305 of 1986 or as held by the High Court that the dispute was decided in the writ proceedings referred to earlier. The execution court is enjoined to adjudicate the claim or the objection or the claim to resistance. As seen, Rule 97 enables such a person to make an application which must be independent of the judgment-debtor or a person having derivate right from the judgment-debtor. The applicant in his own right must be in possession of the property. Admittedly, neither the appellant nor his father was a party to the suit or appeal. Therefore, the decree per force does not bind him. In the writ proceedings, though Nanu was impleaded as 5th respondent, no relief was claimed against him nor a finding adverse to him has been recorded. Thereby, there is no adverse finding recorded either in the suit or in the writ proceedings against the appellant or his father. Under these circumstances, when the appellant has been claiming right, title and interest in Khasra No. 179 from which he is now sought to be dispossessed in execution of the decree by the respondent in respect of Khasra Sakni Nos. 13 and 14, the executing court necessarily has to go into the question whether the property in Khasra No. 179 is part of Khasra Sakni Nos. 13 and 14 and if so, whether the respondent while executing the decree trenched upon his property and sought to dispossess him. The appellant's possession, pending adjudication, needs to be protected by interim orders. Unfortunately, the courts below had not adverted to these crucial aspects of the matter. When the appellant claimed independent right, title and interest and resisted the execution, the decree-holder or the appellant should make an application under Rule 97(1) and the court, in that event, is enjoined to adjudicate the claim and record a finding, allowing or rejecting the claim. It should be remembered that Parliament intended to shorten the litigation and to give effect to it, a simplified procedure was devised for adjudication. On the basis of the fact situation and the nature of the controversy, the claim has to be adjudicated expeditiously in a period not exceeding six months and preferably on day to day basis by putting an end to the tendentious conduct of prolonging the proceedings by suitable orders.

11. The orders of the courts below are accordingly set aside. The matter is remitted to the executing court to go into the question raised by the appellant. In the nature of the dispute, a Commissioner may be appointed by the court by issuing a warrant to demarcate the respective properties in Khasra Sakni Nos. 13 and 14 and Khasra No. 179 as claimed

by the appellant, to find whether Khasra No. 179 is part of the Khasra Sakni Nos. 13 and 14 or independent of the latter. From the averments in the SLP as well as in the petition filed before the executing court, the appellant had not made any claim in respect of the Khasra Sakni Nos. 13 and 14. Therefore, the question of going into the boundaries and the extent of the land covered by sale certificates which have become final cannot arise. As stated earlier, the only limited question is whether Khasra No. 179 is part of Khasra Sakni Nos. 13 and 14 and if not, whether in executing the decree the respondent is entitled to take possession of Khasra Survey No. 179.

12. In this view, it may be open to the respondent to make an application to the executing court to appoint a Commissioner for demarcating the respective properties and for submitting a report and plan in that behalf according to rules. The executing court is directed to dispose of this application within a period of six months from the date of the receipt of this order.

13. The appeal is accordingly allowed, but in the circumstances without costs.

———

† From the Judgment and Order dated 11-7-1994 of the Delhi High Court in C.R.P. No. 574 of 1994

(1999) 1 Supreme Court Cases 271

(BEFORE DR A.S. ANAND, B.N. KIRPAL AND V.N. KHARE, JJ.)

(*Record of Proceedings*)

SABIA KHAN AND OTHERS . . Appellants;

Versus

STATE OF U.P. AND OTHERS . . Respondents.

Writ Petition (C) No. D 2117 of 1998, decided on July 30, 1998

Constitution of India — Art. 32 — Abuse of process of the Court — Writ petition questioning orders of Supreme Court passed on 12-12-1996 and 4-3-1997 in *T.N. Godavarman Thirumulkpad case* relating to conservation and protection of forests and forest produce — Those orders alleged to be of ad hoc nature, violative of Art. 19(1)(g) and falling neither within the purview of S. 2 of Forest (Conservation) Act, 1980 nor within any other law nor within the Directive Principles of State Policy — Held, petition misconceived — Filing of such petition was an abuse of the process of the Court and waste of time of the Court — Cost assessed at Rs 10,000 imposed

T.N. Godavarman Thirumulkpad v. *Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulkpad* v. *Union of India*, (1997) 3 SCC 312, *referred to*

WP dismissed with costs assessed at Rs 10,000 R-M/20466/S

Advocates who appeared in this case:

B.D. Sharma, Advocate, for the Petitioner.

ORDER

1. Refusal to grant a new licence for sawmills by the Regional Director, Social Forestry, Forest Range, Rampur, to the petitioners vide communication dated 18-1-1998, based on the injunction issued by this Court on 12-12-1996[±] and 4-3-1997[±] in *T.N. Godavarman Thirumulkpad* v. *Union of India* has been put in issue in this writ petition. Mr Sharma, learned counsel for the petitioners, submits that the authority was not "required" to go by the orders of this Court, which according to him were not judicial verdicts but "ad hoc orders". We are at a loss to appreciate the submission. Learned counsel apparently overlooks the mandate of Article 144 of the Constitution read with Article 141.

2. While projecting a grievance against the order dated 4-3-1997[±] passed by this Court, the petitioners in para 13 of the grounds say thus:

> "... the order in question dated 4-3-1997[±] passed by the Hon'ble Supreme Court did not come within the purview of the said Section 2

of

the Forest (Conservation) Act, 1980 nor did any other law authorise the Hon'ble Supreme Court to pass the said order nor could the Hon'ble Supreme Court pass the said order on the general ground that the said order protected forest and environment which fell within the Directive Principles of State Policy finding place in Part IV of the Constitution of India which only allowed the competent legislature to enact laws for enforcing the said Directive Principles and which did not by themselves have the force of law under which the Hon'ble Court could pass the order in question dated 4-3-1997[±].”

Again the petitioners aver in para 26 thus:

> “BECAUSE an ad hoc order like the order in question passed by the Hon'ble Supreme Court on 4-3-1997[±] infringing the fundamental right of the petitioners under Article 19(1)(*g*) of the Constitution of India could not be passed by the Hon'ble Supreme Court even in PUBLIC INTEREST LITIGATION, because the only manner permitted by the Constitution for interfering with the fundamental right of a citizen under Article 19(1)(*g*) was by passing some law under Article 19(6) of the Constitution and any interference with such right in any other way, including by an order under public interest litigation would amount to an amendment of Article 19(6) of the Constitution for making which amendment a special procedure under Article 368 of the Constitution had been provided and the Hon'ble Supreme Court, it is respectfully submitted, could not bring about such amendment by merely passing some order in a PUBLIC INTEREST LITIGATION.”

3. The relief claimed by the petitioner, in this petition, is as follows:

> “(*i*) to issue a writ of mandamus or writ, direction or order in the nature thereof or any other writ, direction or order directing the respondents not to interfere with the fundamental right of the petitioners to continue to run and operate their sawmills as licensed operators thereof as has continuously been shown in the respondents' own records for the last several years and to grant/renew their licences for the year 1998 without, in any manner, being influenced by the orders passed by the Hon'ble Supreme Court dated 12-12-1996[±] and 4-3-1997[±] in Writ Petition (Civil) No. 202 of 1995, *T.N. Godavarman* v. *Union of India*.
>
> (*ii*) to grant such further or other order as the Hon'ble Court may deem fit to pass in the special circumstances of this case.
>
> (*iii*) to award costs of this petition to the petitioners.”

4. After hearing Mr Sharma, learned counsel for the petitioners, it is obvious that the petition is misconceived and based on a total misconception. It is an obvious attempt to question the correctness of the orders of this Court through a writ petition under Article 32, which is not permissible. The objection with regard to the office report is also not tenable. Filing of such a petition is an abuse of the process of the Court and waste of time of the Court. We do not find any merit in this petition which is dismissed with costs assessed at Rs 10,000.

5. The costs shall be deposited in the account of the Supreme Court Legal Services Committee within four weeks.

Court Masters

———

† (1997) 2 SCC 267

‡ (1997) 3 SCC 312

Satyabrata Sanjeeb Kumar Mohanta vs Moef on 18 July, 2023

Item No.03 Court No.1

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)

Original Application No.53/2023/EZ
(I.A. No.28/2023/EZ)

Satyabrata Sanjeev Kumar Mohanta Applicant(s)

Versus

MoEF&CC & Ors. Respondent(s)

Date of hearing: 18.07.2023

CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s) : Mr. Md. Akram, Advocate (in Virtual Mode)

For Respondent(s) : Ms. Anamika Pandey, Adv. for R-1 (in Virtual Mode),
Mr. Ashok Kumar Parija, Advocate General a/w
Mr. Tarun Patnaik, ASC for R-2 to 6,
Mr. Dipanjan Ghosh, Advocate for R-7,
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Dhananjaya Mishra, Mr. Biswaranjan Sahoo, and
Ms. Mansi Bachani, Advocates for R-8,

ORDER

1. Mr. Md. Akram, learned Counsel holding brief of Ms. Soumya Mishra, learned Counsel is present (in Virtual Mode) for the Applicant.

2. Affidavit dated 15.07.2023 has been filed by Respondent No.8, Private Respondent; the same is taken on record.

3. Counter-affidavit dated 15.07.2023 has been filed by the Divisional Forest Officer, Keonjhar; the same is taken on record.

4. Mr. Dipanjan Ghosh, learned Counsel files Vakalatnama on behalf of the Respondent No.7, Odisha Power Transmission Corporation Limited (OPTCL); the same is taken on record.

5. We have heard the learned Counsel for the parties and perused the documents on record.

6. Final order of the said case will be uploaded in the website by separate sheets of paper.

..... B. Amit Sthalekar, JM ..... Dr. Arun Kumar Verma, EM July 18, 2023, Original Application No.53/2023/EZ (I.A. No.28/2023/EZ) MN Item No.03 Court No.1 BEFORE THE NATIONAL GREEN TRIBUNAL EASTERN ZONE BENCH, KOLKATA (THROUGH PHYSICAL HEARING WITH HYBRID MODE) ORIGINAL APPLICATION NO.53/2023/EZ (I.A. NO.28/2023/EZ) IN THE MATTER OF:

Satyabrata Sanjeev Kumar Mohanta, Aged about 35 years, S/o - DambarudharaMohanta, At- Karadia, P.O. /P.S.- Karanjia, Dist. -Mayurbhanj, ... Applicant(s) Versus

1. Ministry of Environment, Forest & Climate Change (MoEF&CC), Represented through its Secretary, At- 2nd Floor, Agni Block, Indira Paryavaran Bhawan, Jorbagh Road, New Delhi - 110003

2. Forest, Environment and Climate Change Department, Represented through its Secretary, Government of Odisha, Kharavel Bhavan, Bhubaneswar, Odisha

3. Divisional Forest Officer (D.F.O.), Keonjhar, At- Kamapala Street, Keonjhar Town, Keonjhar, Odisha - 758001

4. Collector & District Magistrate, At- Office of the Collector cum District Magistrate, Collectorate, Keonjhar, P.O./Dist. - Keonjhar, Odisha

5. Divisional Forest Officer (D.F.O.), Bonai, At/P.O. - Bonaigarh, Dist. - Sundergarh, Odisha - 770038

6. Collector & District Magistrate, Sundergarh, At- District Collectorate, Sundergarh, Office of the Collector-cum-District Magistrate, Collectorate Sundergarh, At/P.O. - Sundergarh, Dist. - Sundergarh, Odisha - 770001

7. Odisha Power Transmission Corporation Limited (OPTCL), Represented through Managing Director, At - Janpath Road,Gridco Colony, Industrial Area, Satya Nagar, Bhubaneswar, Odisha - 751022

8. M/s. Rungta Mines Ltd.

Represented through its Managing Director, At- Rungta House,Chaibasa, Dist. - West Singhbhum, Jharkhand - 833201 And At - Rungta Mines Ltd.

Main Road, Barbil HO, Barbil, Dist. - Keonjhar, Odisha - 758035 And At- 8A Express Tower, 42A, Shakespeare Sarani, Kolkata - 700017 West Bengal .... Respondent(s) Date of hearing: 18.07.2023 CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER For Applicant(s) : Mr. Md. Akram, Advocate (in Virtual Mode) For Respondent(s) : Ms. Anamika Pandey, Adv. for R-1 (in Virtual Mode), Mr. Ashok Kumar Parija, Advocate General a/w Mr. Tarun Patnaik, ASC for R-2 to 6, Mr. Dipanjan Ghosh, Advocate for R-7, Mr. Sanjay Upadhyay, Advocate a/w Mr. Dhananjaya Mishra, Mr. Biswaranjan Sahoo, and Ms. Mansi Bachani, Advocates for R-8, ORDER

1. The Applicant in the present Original Application is, inter-alia, seeking a direction to the Respondent No.8, M/s Rungta Mines Ltd., to comply with the conditions stipulated in Stage-I and Stage- II of the Forest Clearance granted to it and also to pay Environmental Compensation for causing damage to forest land to the Project of 132 KV Transmission Line.

2. The allegation of the Applicant is that the Respondent No.8, M/s Rungta Mines Ltd. was granted Stage-I Approval letter from the Ministry of Environment, Forests and Climate Change, Eastern Regional Office, Bhubaneswar, on 25.06.2020 for diversion of 35.507 hectares of forest land (31.806 hectares of forest land under Keonjhar Division and 3.701 hectares of forest land under Bonai Division) for construction of 132 KV Transmission Line from 132/33KV OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd. at Village-Kamanda in Sundergarh, Odisha. It is stated that the route alignment for construction of 132 KV Transmission Line from 132/33 KV OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd. at Village-Kamanda in Sundergarh, Odisha, has been diverted without prior sanction of the Central Government.

3. It is alleged that the User Agency has also changed the layout plan of the proposal without prior approval of the MoEF&CC at Latitude:

> 22°5'18''N Longitude 85°22'38''E on 28.06.2021 and thus obstructing the elephant movement in violation of the conditions stipulated in Stage-I and Stage-II Forest Clearance. It is also stated that the Elephant Corridor, namely, Karmpada, is situated 7.5 KM from the proposed forest area but the site falls under Elephant Habitat Zone - 2.

4. It is further alleged that as per Condition No. viii of Stage-I Clearance dated 25.06.2020, the base of electric transmission towers in the forest area must be fenced with barbed wire, in addition to installation of spike on the legs of the towers in order to avoid elephant and other wildlife getting electrocuted but the Project Proponent has not installed spikes and barbed wire on the electric towers in the forest area.

5. It is also alleged that the Project Proponent, Respondent No.8, has resorted to felling of trees, although they were only permitted felling to a minimum number in the diverted forest land and that too after depositing the cost of felling of the trees with the Forest Department.

6. It is also alleged that Condition No. xviii of the Stage-I Clearance also provides that the layout plan of the proposed forest land shall not be changed by the Project Proponent without the approval of the Central Government but the Respondent No.8 in gross defiance of the said conditions has diverted the sanctioned latitude plan without prior sanction of the Central Government for which the State Forest Department, Keonjhar Division, has also lodged an FIR being FIR No. 10 BL of 21/22 on 28.06.2021. The said FIR records that the incident occurred at Sunderabasti, Barbil near Jagada Sahi near Ward No.15 and one Bijay Kumar Pandey and Avimanyu Das have been arrayed as accused persons who happened to be the contractor of the Respondent No.8 and five felled Sal logs were also seized from their possession and also two quintals of fire wood, which have been kept in the custody of Forest Guard, Mr. Malaya Kumar Jena.

7. It is further alleged that though the Forest Department has not handed over its forest land to the Project Proponent, Respondent No.8, to execute its project work but unauthorisedly 133 KV electricity has been supplied by the OPTCL Grid Station, Barbil, Keonjhar to Kamanda Steel Plant of M/s Rungta Mines Ltd., Respondent No.8, at Village-Kamanda in Sundergarh, Odisha, on 01.12.2022.

8. The allegation further is that though Condition No.ii of the Stage-I Clearance provides that Compensatory Afforestation shall be raised over 37.281 hectares of non-forest land identified in Plot Nos. 232 (P), 233(P) and 234(P), Khata No. 67 (AAA), Kisam-Parbat of Village- Lungajhar under Banspal Tahasil of Keonjhar District, (32.261 hectare) and Plot No. 1263(P), Khata No. 77, Kissam-Patita of Village-Badabanga under Lephiapara Tahasil of Sundergarh District (5.02 hectares), but so far the User Agency, Respondent No.8, has only deposited the money for Compensatory Afforestation but the State Forest Department has failed to supply plant saplings to the User Agency.

9. It is also alleged that the User Agency, Respondent No.8, was allowed to fell 1359 trees (795 Sound and 564 unsound), 1230 Poles below 30 cm girth as per the letter of the Divisional Forest Officer, Keonjhar, 16.03.2021 but the Respondent No.8 has failed to execute the work process and before Government orders could be passed, the execution of the work has already been started by the Respondent No.8. It is also stated that despite non-compliances of the conditions of the Stage-I clearance, the MoEF&CC has illegally granted Stage-II Approval to the Respondent No.8 on 31.03.2021.

10. The Applicant has sought the following reliefs in the Original Application:-

> "a. Admit this original application, Issue Notice; and b. Direct the Opp. Party No.8 to immediately comply the non- complied conditions stipulated under Stage-I & II of the forest clearance granted to the user agency/project proponent i.e., M/s Rungta Mines Ltd.
>
> c. Direct the Opp. Party No.8 to give environmental compensation for damaging the forest land due to the abovementioned project of 132 KV transmission line. d. Direct the Opp. Party No.8 to give environmental compensation for damaging the forest

land due to violation of the conditions stipulated under Stage-I & II of the forest clearance.

e. Direct the Opp. Party No.8 to restore the forest land degraded due to the aforesaid project.

f. Direct the Opp. Party No.1 to 7 to conduct a joint inspection in all respect to ensure the compliance of conditions stipulated under Stage-I & II of the forest clearance to avoid further damage to the environment.

g. To take action against the errant Opp. Party No.1 to 7 and to impose heavy penalty on the errant user agency/O.P. No.8 i.e., M/s Rungta Mines Ltd. for violation of Forest (Conservation) Act, and also for violation of para 1.21 of Chapter-1 of Handbook of Guidelines issued under F.C. Act, 1980 vide Ministry's letter No.5-2/2017-FC dated 28.03.2019."

11. The Applicant has also filed I.A. No.28/2023/EZ, inter-alia, seeking the following interim reliefs:-

"a) Stay/stoppage of the supply of Electricity from OPTCL Power grid Barbil to Kamanda Steel Plant of Rungta Mines Ltd. as the Forest Land has been handed over fraudulently during the pendency of a case for changing the lay out plan without prior sanction of Central Government."

b) Direct stay operation of Kamanda Steel Plant till environmental compensation is adequately paid by the Applicant would suffer irreparable loss and injury, which cannot be compensated otherwise.

c) And pass such any other order as this Hon'ble Court may deem fit and proper."

12. A preliminary objection has been raised by Mr. Sanjay Upadhyay, learned Counsel appearing for Respondent No.8, Project Proponent, that the present Original Application is not maintainable in view of the provisions of Section 16(e) of the National Green Tribunal Act, 2010 (hereinafter referred to as 'Act, 2010')under which only an appeal could be filed if the Applicant was aggrieved by any order or decision made by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980.

13. Section 16(e) of the Act, 2010, reads as under:-

"16. Tribunal to have appellate jurisdiction.-

.....xxx.....xxx.....xxx.....xxx.....

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under section 2 of the

Forest (Conservation) Act, 1980;"

14. We find that although the Applicant has not challenged any order as such or decision made by the State Government under Section 2 of the Forest (Conservation) Act, 1980, but the sum and substance of the reliefs claimed is a challenge to Stage-I Clearance granted by the Ministry of Environment, Forests and Climate Change, Regional Office, Bhubaneswar, on 25.06.2020 as would be clear from para 7 of the Original Application and also Stage-II Clearance approved by the Ministry of Environment, Forests and Climate Change on 31.03.2021 as stated in para 17 of the Original Application. Paras 7 and 17 of the Original Application read as under:-

> "7. That, as per condition no. viii of the Stage - 1 approval letter of MOEF & CC, Eastern Regional Office, Bhubaneswar vide F.No.5 ORC418/2020-BHU, Dated 25.06.2020, the base of electric transmission towers in the forest area must be fenced with barbed wire in addition to installation of spike on the legs of the towers in order to avoid elephant and other wildlife electrocution. But, no electric tower of the said project of Rungta Mines Ltd. has been installed with spikes and barbed wire in the said forest area and such gross irregularity and violation of the aforesaid condition no. viii of the Stage - 1 approval letter can be verified and inspected by appropriate authority."
>
> "17. That, on 31.03.2021, the user agency fraudulently managed to get the stage-2 approval of MOEF & CC even though the industry is non-compliant of stage-1 approval of forest clearance."

15. Learned Counsel for the Applicant submitted that the Applicant was not challenging any order of the State Government under Section 2 of the Forest (Conservation) Act, 1980, and, therefore, the present Original Application is maintainable.

16. However, from the allegations made in the present Original Application, particularly in para 7 and para 17 thereof, we find that under the garb of the reliefs claimed in the Original Application without challenging the order dated 25.06.2020 granting Stage-I Clearance and the order dated 31.03.2021 granting Stage-II Clearance for the Project in question, the Applicant is, in fact, assailing the grant of Stage-I and Stage-II Clearances granted by the Ministry of Environment, Forests and Climate Change and, therefore, in our view, the present Original Application is not maintainable.

17. There is another aspect of the matter which needs to be examined by this Tribunal, particularly in view of the serious objections raised by Mr. Ashok Kumar Parija, learned Advocate General of Odisha assisted by Mr. Tarun Patnaik, learned Additional Standing Counsel appearing for State Respondents, Government of Odisha.

18. Mr. Parija has drawn attention of this Court to para 4 of the affidavit of the Divisional Forest Officer, Keonjhar, dated 15.07.2023, and submitted that the Applicant has not approached this Tribunal with clean hands. He submitted that in 2021 a PIL being W.P. (C) No.33158 of 2021 had been filed before the Hon'ble High Court of Orissa at Cuttack with the cause title "Ashirbad Pattnaik

& Ors. Vs. State of Odisha & Ors.", wherein the State Government and certain other private respondents were impleaded as parties. The allegations raised in the said PIL were similar to those raised in another petition, namely, "Ranjan Panda & Ors. Vs. State of Odisha & Ors.". Para 7 of that petition has been quoted in para 4 of the affidavit of the Divisional Forest Officer, Keonjhar, to show that what was alleged in the said Writ Petition, which is also extracted herein below:-

> "4. .....XXX.....XXX.....XXX.....XXX.....
>
> "7. That it is also pertinent to mention here that, as per the news reported by the Indian Express dated 03.07.2021 and Oriya Weekly Newspaper, Bartta corroborating their statements with certain live photographs stated therein, that the Rungta Mining Company has cut down numerous amount of trees of the reserve forest area for its personal gain without obtaining the prior permission from the forest department near Jagadasahi Village under Joda Block of Keonjhar district. The aforesaid firm needs power supply of 132 KB electricity line for its proposed project at Kamanda Village under Bonai tehsil of Sundergarh district by utilizing 31 Hectares of forest land and such deforestation is largely affecting the environment of the said mining areas for which the presence of trees is utmost essential. Further, the forest range officer of Barbil enquired about the said activity of the said mining firm, lodged a case against the said mining firm for blatant violation of the forest laws. The above said violation is against the provision of Sec. 2 of the Forest Conservation Act, 1980 which clearly states that for any non- forest activity within forest land, needs prior approval from the Ministry of Environment and Forest and Climate Change (MOEF & CC). But at the instant case the said erring mining firm not felt necessary to obtain the said permission before the illegal deforestation activity."

19. It is further stated that the W.P. (C) No. 33158 of 2021 was duly considered by a Division Bench of the Hon'ble High Court and the same was dismissed by the Hon'ble High Court vide judgment and order dated 02.12.2021 with a cost of Rs. 5,000/- (Rupees Five Thousand only) against each of the petitioners (10 in number) totaling Rs. 50,000/- (Rupees Fifty Thousand only). Paras 9, 10 and 11 of the judgment read as under:-

> "9. With the above observations, the present writ petition stands dismissed.
>
> 10. We would have ordinarily observed something againast the counsel appearing in the case. However, keeping in view the early stages of his career, we refrain from commenting upon his conduct except to advise him to be careful in future and not be a party to such a litigation initiated by unscrupulous litigants.
>
> The Registry is also directed to stringently comply with the rules as indicated hereinabove while dealing with Public Interest Litigations so as to prevent valuable judicial time from being wasted and prevent certain unscrupulous elements from weaponizing petitions in courts of law.

> 11. We feel constrained to direct the petitioners (10 in number) to deposit cost of Rs. 5,000/- each (totalling Rs.50,000/-) before the Orissa High Court Bar Association Advocates Welfare positively within four weeks from today, failing which Collector, Keonjhar shall proceed to recover the same as arrears of land revenue and ensure the deposit of the recovered amount as stated hereinabove."

20. Thereafter, I.As. were filed by the petitioners therein (in the High Court) seeking expunging of certain portions of the judgment of the Hon'ble High Court dated 02.12.2021 wherein negative connotation had been made against Mr. Sambit Samal, Counsel who was appearing on behalf of the petitioners in W.P. (C) No. 33158 of 2021 and the said I.As. were also dismissed by a Division Bench of the Hon'ble High Court vide order dated 10.03.2021. Paras 13, 14, 15 & 16 of the order read as under:-

> "13. The observations made in Paragraph 3 and 10 of the judgment dated 02.12.2021 in no way affects the image of the arguing counsel. It was only a note of caution sounded to the counsel so that he may not get involved with unscrupulous litigants. It was merely a reminder on the duty of the counsel to the court and to his profession. The court has, in fact, restrained itself from passing any adverse order considering the petitioner's lesser length of practice at the Bar.
>
> 14. This court makes it clear that in the absence of any disparaging remark made against the counsel for the petitioners, he should take the observations of this Court in the manner in which it was intended, i.e. as a fillip to mould his legal career in a better way in future.
>
> 15. In view of the above, this Court is not inclined to accept the prayer of the petitioners made in the I.As. to effect any change in the judgment dated 02.12.2021 passed by this Court in W.P.(C) No.33158 of 2021.
>
> 16. Accordingly, both the I.As. are dismissed."

21. Learned Advocate General also submitted that the judgment of the Hon'ble High Court was challenged by the petitioners before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.8637/2022 and the said SLP was dismissed by the Hon'ble Supreme Court vide its order dated 09.09.2022 and the judgment of the Hon'ble High Court was upheld and the Hon'ble Supreme Court observed that the Special Leave Petitions are an abuse of process of Court and the said Special Leave Petitions were dismissed with cost of Rs. 25,000/- (Rupees Twenty Five Thousand only). The order of the Hon'ble Supreme Court reads as under:-

> "UPON hearing the counsel the court made the following ORDER Permission to file the Special Leave Petition granted.
>
> 2. Delay in refiling the Special Leave Petition is condoned.

3. Application for permission to implead the High Court of Orissa is dismissed.

4. Having heard senior counsel appearing on behalf of the petitioners, we see no reason to entertain the Special Leave Petitions. The High Court was entirely justified in coming to the conclusion that the petition was filed after suppressing the fact that an earlier petition filed by the same advocate had been dismissed as withdrawn. The subsequent petition contains substantially the same averments. The Special Leave Petitions are an abuse of process. We accordingly dismiss the Special Leave Petitions with costs quantified at Rs.25,000, which shall be paid to the Supreme Court Bar Association within four weeks.

5. Pending application, if any, stands disposed of."

22. Learned Advocate General further submitted that the address given by the Counsel for the present Applicant Ms. Soumya Mishra, has upon verification been found to be the same as that of Mr. Sambit Samal, the Counsel who had filed the PIL being W.P. (C) No. 33158 of 2021 before the Hon'ble High Court of Orissa, as being 552/t/13, Friends Colony, B.K. Road, P.O.-Buxi Bazar, P.S.-Mangalabag, District-Cuttack, Odisha, Pin - 753001, as stated in the affidavit of the Divisional Forest Officer, Keonjhar, dated 15.07.2023.

23. This fact has not been disputed by Mr. Md. Akram, Counsel holding brief of Ms. Soumya Mishra. Even the photocopy of the registered post on record, filed with the affidavit of service, mentions the address of Ms. Soumya Mishra as 'Friends Colony.'

24. In this view of the matter, the submission of Ashok Kumar Parija, learned Advocate General as well as Mr. Sanjay Upadhyay, learned Counsel appearing for Respondent No.8, is that the present Original Application has been originated in the same chamber as that of Mr. Sambit Sambal, though under the name of different parties and in the name of a different Counsel which amounts to a fraud upon the Court and also amounts to abuse of process of Court.

25. Ms. Soumya Mishra, learned Counsel who has filed the present Original Application is not present today. Mr. Md. Akram's Vakalatnama is on record and he is present today and has been heard. As we have already noted hereinabove Mr. Akram could not dispute either the legal position as to the non-maintainability of the present Original Application or the fact of dismissal of the PIL WP (C) No.33158 of 2021 and allied cases by the Hon'ble High Court of Orissa as well as dismissal of SLP (C) No. 8637 of 2022 by the Hon'ble Supreme Court.

26. We are, therefore, satisfied that not only is the Original Application not maintainable but the same is an abuse of process of Court in view of the order passed by the Hon'ble High Court of Orissa at Cuttack and the Hon'ble Supreme Court.

27. In view of above, the Original Application No.53/2023/EZ is accordingly dismissed with a cost of Rs. 10,000/- (Rupees Ten Thousand only) against the Applicant, Satyabrata Sanjeeb Kumar. The amount of cost shall be deposited by the Applicant with the Ld. Registrar, National Green Tribunal,

Eastern Zone Bench, Kolkata, within one week from the date of this order. In case the Applicant fails to deposit the amount of cost with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata, the same shall be recovered from him by the Collector & District Magistrate, Keonjhar, in accordance with law and the same shall be deposited with the Ld. Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata.

28. Let a copy of this order be also forwarded to the Collector & District Magistrate, Keonjhar, for due compliance.

29. I.As. if any, stand disposed of accordingly.

..... B. Amit Sthalekar, JM ..... Dr. Arun Kumar Verma, EM July 18, 2023, Original Application No.53/2023/EZ (I.A. No.28/2023/EZ) AK

Virani Construction Company vs State Level Environmental Impact ... on 26 September, 2013

BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPEAL No. 72/2013

CORAM:

Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)

Hon'ble Dr. Ajay.A.Deshpande
(Expert Member)

B E T W E E N:

VIRANI CONSTRUCTION COMPANY
Ground Floor, Virani Plaza,
Next to Virani Petrol Pump,
Kausa, Thane-400612.

....Appellant

AND

1. THE STATE LEVEL ENVIROMENTAL IMPACT
ASSESSMENT COMMITTEE (SEAC),
Maharashtra
C/o, Secretary Environment,
Room No.217, Mantralaya Annex,
Mumbai-400032.

2. THE STATE LEVEL ENVIROMENTAL IMPACT
ASSESSMENT AUTHORITY (SEIAA),
Maharashtra
C/o, Secretary Environment,
Room No.217, Mantralaya Annex,
Mumbai-400032.

3. GOVT. OF MAHARASHTRA
Environment Department

Secretary Environment,
Room No.217, Mantralay Annex,
Mumbai-400032.

.....Respondents

Counsel for Appellants:
Mr. R.B.Mahabal Advocate.

Counsel for Respondents:
Mr.D.S.Bhalerao for Respondent No. 1,
Mr. A.M. Pimparkar for Respondent No.2.

Date 26th September, 2013

J U D G M E N T

1. This is an appeal against decision taken by the State Environmental Assessment Committee (SEAC), in its meetings dated 22nd, 23rd and 24th of May, 2013. The appellant is a developer. The appellant has been authorized to construct buildings on the plots bearing Survey Nos. 36/4, 37/1 and 37/2, situated at village Kausa (district Thane).

2. It is not necessary to give a detailed account of the facts stated by the Appellant. Briefly stated, the Appellant initially proposed to carry out residential-cum-commercial construction project; having total construction area of 19,796.74 sq. meters on the above three plots. The appellant submitted plans to the Thane Municipal Corporation (TMC) for approval. The plans were approved. The TMC issued required commencement certificate dated 9th April, 2012. Subsequently, the Appellant decided to construct more area. Comprehensively, the total construction as proposed was of 38,071 sq. meters. Since it was over and above 20,000 sq. meters, the appellant approached to the State Environmental Assessment Committee (SEAC) for grant of Environmental Clearance (EC), in accordance with the MoEF Notification dated 14th September, 2006.

3. The appellant, admittedly, constructed 5,965 sq. meters of built up area on the said plots before the grant of EC. The proposal was considered by the State Environmental Assessment Committee (SEAC) in the meetings held on 22nd, 23rd and 24th May, 2013. The SEAC held that the construction of 5968 sq. meters, built up area was done by the appellant in violation of the MoEF Notification dated 14th September, 2006, and hence, the State Environmental Impact Assessment Authority (SEIAA), after due verification may initiate credible action, in accordance with OM dated 12th December, 2012, issued by the MoEF. Thus, proposal was referred to the State Environmental Impact Assessment Authority (SEIAA). The State Environmental Assessment Committee (SEAC) observed that the proposal will be considered only after the State Environmental Impact Assessment Authority (SEIAA) will take appropriate action or will give further instructions in the matter.

4. We have heard the learned Counsel for the parties. We have perused the affidavit in reply filed on behalf of the Respondent Nos. 1, 2 and 3. The Respondents have justified their action taken by the State Environmental Assessment Committee (SEAC). The Respondents referred to various OMs. The Respondents submitted that the question involved, is in the context of interpretation of the provisions contained in EIA Notification, as well as various OMs, coupled with the Orders passed by the Hon'ble High Court of Bombay.

5. We have heard learned Counsel for the parties. We have also perused the relevant OM dated 12th December, 2012. The learned Counsel for the Appellant invited our attention to the Judgments rendered by the Hon'ble High Court of Bombay in (1) WP.No.2809 of 2012, (2) WP Lodging No.470 of 2013, (3) WP No.654 of 2013, (4) WP (L) No.852 of 2013 and (5) WP (L) No.470 of 2013.

6. Learned Counsel for the Appellant argued that the SEAC, should have considered the proposal on its merits. He contended that the part of construction carried out by the Appellant is duly authorized in view of the Municipal permission. He argued that the Appellant approached to SEAC due to subsequent development, namely, decision to expand its original project. He argued that the construction done by the Appellant is legal one, because no EC was needed at the time the project was for area below 20,000 se. meters. It is argued that the Appellant cannot be penalized for the earlier construction and, therefore, the impugned decision of SEAC is bad in law.

7. Before we proceed to consider the appeal on merits, it may be noted that the prayers in the Appeal, clearly go to show that certain directions are sought against the SEAC, particularly, for consideration of construction proposal in full on environmental aspects. Not only that but the Appellant seeks declaration that previous construction of 8083 sq. meters, does not amount to violation of provisions of the Regulations enumerated in the MoEF Notification dated 14th September, 2006.

8. The Appellate jurisdiction of this Tribunal is circumscribed under Clauses (h) and (i) of Section 16 of Environment (Protection) Act, 1986. It will be useful to reproduce the relevant part of Section 16 along with Sub clauses (h) and (i) of the National Green Tribunal Act, 2010 for ready reference. It reads as follows:

> "16. Tribunal to have appellate jurisdiction.--Any person aggrieved by,-
>
> (a) xxx xxx xxx xxx
> (b) xxx xxx xxx xxx
> (c) xxx xxx xxx xxx
> (d) xxx xxx xxx xxx
> (e) xxx xxx xxx xxx
> (f) xxx xxx xxx xxx
> (g) xxx xxx xxx xxx
>
> (h) an order made, on or after the commencement of the National Green Tribunal Act,2010, granting environmental clearance in the area in which any industries, operations or recesses or class of industries, operations and processes shall not be

carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act,1986 (20 of 1986)

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act,1986 (29 of 1986);

(j) xxx xxx xxx xxx

(Emphasis Supplied)

9. A plain reading of above provision clearly shows that an Appeal can be entertained, if it is against the provisions issued under Section 5 of the Environment (Protection) Act, 1986, or order granting the EC, or refusing the EC. There appears no escape from conclusion that the Appellate jurisdiction of this Tribunal, is not equivalent to the Writ jurisdiction available to the Hon'ble High Court, under Art.226 of the Constitution. It is obvious, therefore, that this Tribunal cannot grant any declaratory relief and cannot issue any direction in the manner as prayed by the Appellant. In other words, we cannot direct SEAC to consider the proposal of the Appellant in full, excluding the area of the construction which was done prior to submission of the proposal. We cannot direct SEAC to segregate the earlier construction from remaining part of development project.

Needless to say, the Appeal is pre-mature and incompetent.

10. Perusal of the record shows that the Appellant has not given up the project for construction of more than 20,000 Sq. meters. The Appellant's proposal is for construction of 38,071 sq. meters. The MoEF Notification dated 14th September, 2006, is part and parcel of the act done in pursuance of delegated powers, under the provisions of Environment (Protection) Act, 1986. The relevant Clause in the said Notification reads as under :

"Requirement of prior Environmental Clearance (EC):-

The following Projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for and for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity;

(i) All new projects or activities listed in the Schedule to this notification.

13. On careful consideration of the Judgments of the Hon''ble High Court of Bombay, we are of the opinion that the relief was granted to other Project Proponents like M/s Saumya Buildcon Pvt. Ltd, M/s Tridhatu Ventures Ltd and M/s Nahur Vikekanand Co-op. Housing Society Ltd and another, having regard to the facts of particular cases. It is important to note that in (WP No.654 of 2013,M/s Tridhatu Ventures Ltd V/s State of Maharashtra and others, the Hon'ble High Court permitted the Project Proponent to put up construction upto 19,000 sq. meters, including construction of 4935 sq. meters, which was already putup, subject to certain conditions. The conditions enumerated in para 17 of that Judgment, may be reproduced as follows:

> "17. Having heard learned counsel for parties, and in the facts and circumstances of the case and particularly in the view of the fact that the width of the road is sufficient as required by the DCR 1991 and as far as OM is concerned, the same is treated as advisory and not mandatory and in the facts of the present case where the petitioner does not propose to make any further digging in the earth or laying any further foundation structure for the purpose of putting up construction upto 19,000 sq. mtrs. of built up area including 4935 sq. mtrs already put up by the petitioner, we are inclined to direct the respondent- Municipal Corporation to permit the petitioner to put up construction upto to 19,000 sq. meter including 4935 sq.meter already put up, subject to following conditions:
>
> (i) that the petitioner as well as the Chairman of 'Sri Swati Co-operative Housing Society' shall file undertakings stating that the petitioner and the society shall not put up any construction exceeding 20,000 sq meter including the existing construction on the site village of Borla, Govandi.
>
> (ii) that the petitioner will be putting up construction of 19,000 sq. mtrs for the purpose of accommodation 75 or maximum 78 members of 'Sri Swati Co-operative Housing Society' whose flats have already been demolished in 2010 for the purpose of redevelopment and not for any other purpose.
>
> (iii) that the petitioner shall not do any further digging on the ground for laying foundation and shall only continue with the construction on the existing construction by raising height of the building within the limits permissible as per the DCR 1991 and in accordance with plans which may be sanctioned by the Municipal Corporation.
>
> (iv) that the petitioner will not claim equity on the basis of this order.

(Emphasis supplied)

14. In our opinion, the Judgments of the Hon'ble High Court of Bombay are rendered in peculiar circumstances of each case. The said Judgments do not give a go-by to the requirements as enumerated vide MoEF Notification dated 14th September, 2006, nor OM dated 12th December ,2012, issued by the MOEF, has been quashed or held ultra vires. In fact, OM dated 12th December,

2012, brings about internal instructions given by the MoEF to the State Authority. The Appellant cannot, as a matter of right, challenge the impugned decision of SEAC. The prayer Clause in the Appeal Memo reads as follows:

> A. The SEAC be directed to hear the complete proposal as submitted by the appellant for grant of Environmental Clearance on merit, notwithstanding the independent action that may be taken by the SEIAA.
>
> B. Prior construction to the extent of 5,965m2 is legal as it does not attract the provisions of EIA notification 2006, as it is lesser than 20,000m2does not attract the provisions of EIA notification 2006, as it is lesser than 20,000 sq. meters.
>
> C. There is no violation by the Appellant with respect to the construction of the appellant of 5965m2on the said plot.
>
> D. Any other relief as may be deemed fit in the interest of justice.

15. This Tribunal cannot declare that the construction to the extent of 5,965 sq. meters is legal one. This Tribunal cannot entertain the Appeal against the decision of SEAC, which is not a final order as such. The SEAC, by the impugned decision only referred the proposal for necessary action to SEIAA, and decided to consider the proposal after the necessary action, or any other instructions of the superior Authority. The impugned decision, therefore, does not trample any legal right of the Appellant. What we find from the nature of the pleadings and prayers indicated in the Appeal Memo, is that by filing this Appeal, the Appellant desires to regularize the illegal construction, which has been already done inspite of the fact that no EC is granted for the project, though the said construction is part and parcel of the said project.

16. Taking a stock of the foregoing discussion, we are of the opinion that the Appeal is not maintainable and is incompetent. We are of further opinion that the appellant filed the present Appeal with malafide intention to put pressure on SEAC and SEIAA, in order to escape from credible action contemplated against him. In this view of the matter, the Appeal is liable to be dismissed with exemplary costs. We accordingly dismiss the Appeal with costs of Rs.1,00,000/-(Rs.One Lac). The amount of costs shall be deposited by the Appellant within one month by sending D.D drawn in favour of Fund Manager, Environmental Relief Fund, as per MoEF, Notification GSR-768(E),dated 4-10- 2008, notified under the provisions of Section 7(A) of the Public Liability Insurance Act,1991, directly sent to the said Authority under Registered Post/acknowledgement due. The appellant shall produce copy of the D.D., copy of the acknowledgment of forwarding letter and receipt of payment to the said Authority, in the office of this Tribunal, within a period of one month (four weeks). In case of default of payment of the said costs, in the manner stated above, we will be constrained to direct attachment of the constructed building of the Appellant and may issue further directions to defer the proposal of the Appellant from consideration till the said amount is paid, or for any other coercive action, as may be permissible under the Law.

....., JM (V. R. Kingaonkar) ....., EM (Dr. Ajay.A. Deshpande)

Waseem Ahmed vs State Of U.P on 12 May, 2023

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel

Item No. 04 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 62/2023

(With report dated 9.5.2023)

Waseem Ahmad Applicant

Versus

State of U.P. Respondent

Date of hearing: 12.05.2023

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

ORDER

1. Grievance in this application is against violation of environmental norms by M/s Bharat Brass International in operating multiple furnaces and other manufacturing processes resulting in discharge of toxic liquids in drain to the detriment of environment at Moradabad in UP.

2. Vide order dated 3.3.2023, the Tribunal sought a factual report in the matter from a joint Committee comprising State PCB, CPCB and District Magistrate, Moradabad.

3. Accordingly, report dated 9.5.2023 has been filed after site visit concluding as follows:

"4- Conclusion-

i. During visit it was found that unit M/s Bharat Brass International, Anand Bhawan 31, Civil Lines, Fateh singh marg, near ST. Pauls's Collage, Moradabad does not

exists.

ii. Joint committee visited the place of factory address Paper mill Chauraha, near Pipe Factory, Mehlakpur Road, Aghwanpur, Moradabad as mentioned by complainant in letter dated 01.09.2022 and unit M/s Bharat Brass International was not found in existence in nearby area. Also no factory was found owned by Mr. Anuj Mathur at the nearby area."

4. The applicant has not contested the report. We have thus to proceed on the basis thereof.

5. In view of above, the application was based on misleading and false facts which has resulted in abuse of process of law. Accordingly, the application is dismissed with cost quantified at Rs. 25,000/-.

6. The applicant may deposit the cost with the State PCB within one month, failing which the State PCB may take coercive measures for recovery of the amount. On realisation, the amount be utilized for restoration of the environment.

A copy of this order be forwarded to State PCB, CPCB and District Magistrate, Moradabad and the applicant by e-mail for compliance.

Adarsh Kumar Goel, CP Sudhir Agarwal, JM Dr. A. Senthil Vel, EM May 12, 2023 Original Application No. 62/2023 DV

2014 SCC OnLine Del 1135 : ILR (2014) 3 Del 2200

In the High Court of Delhi

WP

(BEFORE HIMA KOHLI, J.)

Trans India Logistics … Petitioner;

Versus

Union of India & Ors. … Respondents.

W.P.(C) No.: 1643/2014 & CM Appl.: 3425 - 3426/2014

Decided on March 13, 2014

A. Constitution of India — Article 226 — Petition seeking quashing of an order passed by Respondent 4 informing that the tenure of the lease of the period for the two lease contracts had expired and it was not possible to consider its request for extension of the contract. Held — Petitioner has remained completely silent about the letter issued by the respondents rejecting the extension of the subject contract. It is settled law that when a party approaches the High Court and seeks invocation of its jurisdiction u/a. 226, it must place on record all the relevant facts before the Court without any reservation. In exercising its discretionary jurisdiction u/a. 226 the High Court not only acts as a court of law, but also as a court of equity. Therefore, in case of deliberate concealment or suppression of material facts on the part of the petitioner or if it transpires that the facts have been so twisted and placed before the Court, so as to amount to concealment, the writ court is well entitled to entertain the petition and dismiss it without entering into the merits of the matter. Petition dismissed.

It is a settled law that when a party approaches the High Court and seeks the invocation of its jurisdiction under Article 226 of the Constitution of India, it must place on

record all the relevant facts before the Court without any reservation. In exercising its discretionary powers and extraordinary jurisdiction under Article 226 of the Constitution of India, the High Court not only acts as a court of law, but also as a court of equity. Therefore, in case there is a deliberate concealment or suppression of material facts on the part of the petitioner or it transpires that the facts have been so twisted and placed before the Court, so as to amount to concealment, the writ court is entitled to refuse to entertain the petition and dismiss it without entering into the merits of the matter [Refer : *Prestige Lights Ltd.* v. *State Bank of*

India, (2007) 8 SCC 449].

(Para 7)

In the case at hand, on a perusal of the petition including the list of dates and events and annexures, this Court finds that the petitioner has remained completely silent about the letter dated 6.12.2010 issued by the respondents rejecting the extension of the subject contract that was duly received by him. Moreover, the petitioner has concealed the fact that he had accepted the extension for the contract of leasing of 4 tonnes RSLR space in train no. 2626 on the conditions imposed by the respondents vide letter dated 21.01.2011 which were on the same lines as contained in the letter dated 06.12.2010.

(Para 8)

The aforesaid conduct of the petitioned amounts to deliberate concealment of material facts from the Court, which itself is considered a sufficient ground for the Court to dismiss the present petition. The petitioner cannot expect equity to flow in his favour when he elects to approach the Court with unclean hands and states half truths and makes selective disclosures.

(Para 9)

[An Ba]

Case referred to:

1. *Prestige Lights Ltd.* v. *State Bank of India*, (2007) 8 SCC 449.

Result: Petition dismissed.

Appearances:

For the Petitioner: Mr. Sukumar Pattjoshi, Sr. Advocate with Mr. Swetank Shantanu, Mr. Pratap Shankar and Mr. Pratap Shankar and Mr. S.K. Dubey,

Advocates.

For the Respondents: Mr. Jagjit Singh, Advocate with Ms. Sampa Sengupta and Mr. Tarak Khanna, Advocates.

The Judgment of the Court was delivered by

HIMA KOHLI, J. (Oral):— The present petition has been filed by the petitioner praying inter alia for quashing of an order dated 18.02.2014 passed by the respondent No. 4 informing it that the tenure of the lease period for the two lease contracts granted to it in respect of FSLR II and RSLR in train No. 2626 had expired in one case, on 18.09.2010 and in the other case, on 19.01.2011 and therefore, it was not possible to consider its request for extension of the lease contract in terms of clause 18 of the agreement dated 05.03.2008 executed by the parties.

2. Mr. Pattjoshi, learned Senior Advocate appearing for the petitioner states that it was during the currency of the subject lease agreement that the petitioner had addressed a representation dated 15.03.2010 to the respondents seeking extension of the lease. However, the respondents had failed to reply to the said request made by the petitioner till as late as on 28.09.2010, when they had addressed a letter informing him that the competent authority had decided to extend the petitioner's lease but with certain conditions as mentioned in Annexure P-4. It is submitted that as the conditions imposed in the said letter were contrary to the terms and conditions of the agreement governing the parties and the directions issued in the Circular No. 12/2006, the petitioner had written a letter dated 30.09.2010 to the respondents stating inter alia that he was entitled to extension of the contract in terms of the conditions stipulated in the original agreement. It is submitted by learned counsel that thereafter, a series of representations were made by the petitioner to the respondents on the same lines seeking extension of the contract but the respondents did not give any reply till as recently as on 18.02.2014, when the impugned letter was issued declining the petitioner's request.

3. Mr. Jagjit Singh, counsel for the respondents, who appears on advance copy, disputes the aforesaid submissions made by the other side and states on instructions that the petitioner has deliberately withheld a letter dated 06.12.2010 addressed by the respondents to him on the issue of extension of the contract, wherein he was informed that since he had not accepted the conditions that were mentioned in the earlier letter dated 28.09.2010, the competent authority had decided not to extend the contract. He hands over a copy of the letter dated 06.12.2010 issued by the respondents that is taken on record.

4. Mr. Sowmen Bhowmik, the proprietor of the petitioner is present in Court. Learned counsel for the petitioner has been asked to obtain instructions from his client as to why the aforesaid letter has not been placed on record. The briefing counsel confirms the fact that his client had duly received the aforesaid letter dated 06.12.2010 but states that he had not revealed the same to him at the time of drafting the present petition.

5. Further, counsel for the respondents states that the petitioner has failed to point out that out of the two lease agreements executed with the petitioner, the lease in respect of RSLR in train No. 2626 was duly

extended by the respondents for a period of two years as the petitioner had duly complied with the conditions imposed by the respondents on him in its letter. In support of the said submission, learned counsel hands over a copy of the letter dated 20.01.2011 addressed by the respondents to the petitioner granting him extension of lease of 04 tons RSLR space in train No. 2626 for a period of two years or till finalization of fresh tender, which was duly accepted by him. Curiously, even the aforesaid facts have not been mentioned in the writ petition. Though the petitioner had accepted similar terms and conditions imposed by the respondents in the letter dated 20.01.2011, there is not a whisper in the writ petition as to the fact that the petitioner had accepted the said extension on the conditions imposed by the respondents, except for making a passing reference to the letter dated 21.01.2011 in sub-para (V)(k) of the writ petition.

6. Lastly, learned counsel for the respondents states that upon the expiry of the lease in respect of the subject train on 22.02.2011, a fresh contract was granted to a third party that was valid till 21.02.2014, and during the currency of the said contract, steps have been initiated by the respondents to float a fresh tender for inviting bids for executing a fresh

lease in respect of the subject train and therefore, the petitioner is not entitled to any relief in the present petition.

7. It is a settled law that when a party approaches the High Court and seeks the invocation of its jurisdiction under Article 226 of the Constitution of India, it must place on record all the relevant facts before the Court without any reservation. In exercising its discretionary powers and extraordinary jurisdiction under Article 226 of the Constitution of India, the High Court not only acts as a court of law, but also as a court of equity. Therefore, in case there is a deliberate concealment or suppression of material facts on the part of the petitioner or it transpires that the facts have been so twisted and placed before the Court, so as to amount to concealment, the writ court is entitled to refuse to entertain the petition and dismiss it without entering into the merits of the matter [Refer: *Prestige Lights Ltd.* v. *State Bank of India*, (2007) 8 SCC 449].

8. In the case at hand, on a perusal of the petition including the list of dates and events and annexures, this Court finds that the petitioner has remained completely silent about the letter dated 6.12.2010 issued by the respondents rejecting the extension of the subject contract that

was duly received by him. Moreover, the petitioner has concealed the fact that he had accepted the extension for the contract of leasing of 4 tonnes RSLR space in train no. 2626 on the conditions imposed by the respondents vide letter dated 21.01.2011 which were on the same lines as contained in the letter dated 06.12.2010.

9. The aforesaid conduct of the petitioner amounts to deliberate concealment of material facts from the Court, which itself is considered a sufficient ground for the Court to dismiss the present petition. The petitioner cannot expect equity to flow in his favour when he elects to approach the Court with unclean hands and states half truths and makes selective disclosures.

10. In view of the aforesaid facts and circumstances, while refraining from imposing substantial costs on the petitioner for intentionally failing to reveal all the necessary and material facts to the Court and deliberately failing to place on record the relevant documents, the present petition is dismissed with costs of Rs. 10,000/- to be deposited with the Delhi High Court Mediation and Conciliation Centre within two weeks from today and proof of deposit, placed on record within the same time. In case the

costs are not deposited and proof of paymept not placed on record, then the Registry shall place the matter before the court.

11. The petition is dismissed, alongwith the pending applications.

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REPORTABLE

2023 INSC 618

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3856/2022

SINGRAULI SUPER THERMAL POWER STATION APPELLANT(S)

VERSUS

ASHWANI KUMAR DUBEY & ORS. RESPONDENT(S)

WITH

CIVIL APPEAL No.4529/2022

CIVIL APPEAL No.4525/2022

CIVIL APPEAL No.4581/2022

J U D G M E N T

NAGARATHNA J.

Since the grievances ventilated by the appellant(s) in these appeals are common, they have been clubbed and heard together and are disposed of by this common judgment.

2. The appellants(s) herein are aggrieved by the order passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as "NGT" for the sake of convenience) dated 18.01.2022. By the said order the following directions have been issued against the appellant(s) herein:-

> "Directions:
> 21. In the light of above discussion, it is patent that remedial measures are required in terms of recommendations set out in para 15 above in respect of individual TPPs or other projects as well as general issues applicable to all the TPPs such as timely installation of air pollution control and monitoring devises, timely utilization and disposal of fly ash, scientific designing of fly ash dykes and safety norms, addressing public health issues, steps for restoration of deteriorated environment by bringing down CEPI scores in the entire area, restoration of Rihand Reservoir and other damaged/degraded areas, providing arrangement for

public health facilities, including water supply and by coordinated and concerted efforts and high level monitoring. The PP are to be accountable for past violations and are under obligation to remedy the violations and follow the norms for future. The regulators are to enforce the same and higher authorities are to oversee. Accordingly, following direction are issued:

i. We direct constitution of a fly ash management and utilization Mission to be jointly headed by the Secretaries, MoEF&&CC, Coal and Power, GoI and Chief Secretaries of UP and MP. The Secretary, MoEF&CC will be the nodal agency for coordination and compliance. The Mission will coordinate and monitor issues relating to handling and disposal of flyash as well as all associated issues in the light of above discussion. It may hold its first meeting within one month to take stock of the situation and to prepare action plan in the light of recommendations of Joint Committees quoted earlier in para 15 above in respect of individual plants as well as road map generally. Thereafter, it may meet atleast once in a month for one year to review the progress. The resolutions of the Mission and quarterly progress may be placed on the website of MoEF&CC for information of the stake holders and inhabitants in the area. The Mission will be free to interact with the concerned Government Departments/ Expert institutions/individuals/other stakeholders. The Mission may in its first meeting require voluntary financial contribution by all the projects in proportion of the financial capacity of the projects out of CSR funds or otherwise. The contribution, alongwith compensation which may be collected may be credited to a separate environment restoration account for restoration of environment and relief to the victims of damage to the environment in such manner as may be found necessary by the Mission. Any victim or aggrieved party will be free to approach the Mission for providing such relief. The Mission may also consider the safeguards laid down in the Notification dated 31.12.2021, particularly for safety audits of sh dykes which should be conducted particularly for structural stability, as far as possible within six months. Advisory issued by the Ministry of Power dated 22.9.2021 will not be enforced being against the spirit of notification dated 31. 12.2021 and obstructing much needed speedy utilisation/disposal of legacy flyash. The Mission may evolve mechanism for interaction with stake holders, including associations of brick kiln owners. Guidelines be also issued for siting, design and engineering standards for the location, disposal, maintenance and regulation of Ash Ponds as breach of a fly ash pond result in great disaster. Public health and risk impact

assessment in the areas of operation of TPPs and generators of fly ash may be got conducted. The Mission may also monitor scientific management and utilization of fly ash by power projects outside Singrauli and Sonebhadra, in coordination with Chief Secretaries of concerned States and adopting safety measures for ash dykes, installing devices to control air pollution, (including FGDs, OCEMS) in a time bound manner and restoration of environment and public health. The Mission may also consider use of beneficiated coal. It may in particular consider on-site and off-site crisis management plans with regard to fly ash ponds and dykes. As noted earlier, legacy fly ash is 1670.602 Million Tonnes as on.31.12.2021 and data of ash generation and utilization of legacy fly ash is as follows:

"Summary of of Ash Generation and Utilization during year 2020-21

No. of Thermal Power Stations	**191**
Capacity (MW)	**2,13,030 MW**
Coal Consumed	**672.130 Million Tonnes**
Fly Ash Generation	**222.789 Million Tonnes**
Fly Ash Utilization	**205.098 Million Tonnes**
Percentage Utilization	**92.06%**
Legacy Flyash	**1670.602 Million Tonnes**

The Committee of Secretaries, in coordination with PPs and statutory regulators, may draw a road map for utilization and disposal of entire legacy fly ash for Sonebhadra and Singrauli areas as well as for all the Power Plants located in clusters or standalone with tagging the sources to utilize fly ash on voluntary and compulsion mode for which required mechanism be laid down.

ii. With regard to past violations, the PPs remain liable and the Joint Committee of CPCB, State PCB and jurisdictional District Magistrates may determine compensation following due process, on the principles laid down inter alia in M.C. Mehta, (1987) 1 sec 395, Sterlite (2013) 4 sec 575 and Goel Ganga (2018) 18 SCC 257, having regard to the period of violation and financial capacity of the unit. The PPs may take remedial measures as per recommendations of the Committee and as per law, failing with coercive measures for continuing or future violations be taken by concerned authorities.

iii. Statutoiy regulators may take action in terms of need for compliances in the light of recommendations with regard to individual Plants as well as generally so as to require the concerned PPs to comply, failing which coercive measures be taken by the statutory regulators In accordance with law.

iv. In respect of incident dated 10.04.2020, compensation paid to heirs of the deceased at the rate of Rs. 10 lakhs per death is increased to Rs. 15 lakhs on principles laid down inter alia in Sarla Verma (2009) 6 SCC 121 and Uphaar Cinema (2011) 14 SCC 481. We direct the remaining amount to be paid within one month. This order will not debar the heirs of the victims to claim higher compensation by approaching appropriate forum. If the salaries to persons appointed as compensation to the victims are below minimum wages, the PP may ensure compliance of law on the subject which may be also looked into by the concerned Labour Departments of the State of UP and MP. The statutory regulators may take further remedial action in terms of recommendations of the Committee in OA 148/2020, quoted earlier for restoration of environment and preventing such incidents.

v. With regard to breach of Rihand Reservoir also, further remedial measures be taken in terms of recommendations on the subject, quoted in para 15 above.

All the matters (including IAs) will stand disposed of accordingly. If any grievance survives, aggrieved parties are free to take remedies as per law.

A copy of this order be forwarded to the Secretaries, MoEF&CC, Coal and Power, GoI and Chief Secretaries of UP and MP, CPCB, State PCBs, SEIAAs, PCCFs (HoFF) UP and MP, District Magistrates, Singrauli and Sonebhadra, Labour Commissioners, UP and MP, State Disaster Management Authorities of UP and MP and SSPs by e-mail for compliance. CPCB may also circulate the same by email to all TPPs or other concerned to facilitate compliance.

Adarsh Kumar Goel, CP

Sudhlr Agarwal, JM

Brijesh Sethi, JM

Prof. A. Senthil Ve!, EM

Dr. Afroz Ahmad, EM

January 18, 2022

3. Being aggrieved by the directions issued by the NGT and the manner in which the original petition has been disposed of, the appellants have filed these appeals.

4. At this stage itself it may be noted that the first respondent, the original applicant before the NGT has been served in all the cases and has not appeared in these cases. In the circumstances, the appeals have been heard and decided, by taking into consideration, the submissions of the learned counsel appearing for the appellants herein.

5. Learned Solicitor General appearing for the appellants in C.A. No.3856/2022 at the outset submitted that the proceedings of the NGT are judicial proceedings and compliance of principles of natural justice is a hallmark of all judicial proceedings. That in the instant case, while the NGT was well within its powers to constitute an expert Committee and to seek a report with regard to the alleged violations complained of by the first respondent herein, on receipt of the said report, it was necessary that the alleged violators were given an opportunity to object to the said report and after consideration of the objections, the NGT ought to have passed a considered order and issued only those directions which were appropriate having regard to the facts of each industry that was made a respondent before the NGT.

He further submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as the "Act" for the sake of convenience) categorically states that the Tribunal, though not bound by the procedure laid down by the Code of Civil Procedure, 1908, shall nevertheless be guided by the principles of natural

justice.

According to learned Solicitor General in the instant case, there has been gross violation of the principles of national justice on two counts: firstly, the report of the Committee constituted by the NGT and the recommendations made by the said Committee could not be objected to by the appellant(s) herein as there was hardly any time given to the appellants to even peruse the same. In this regard, he drew our attention to the fact that the report and the recommendations of the Committee constituted by the NGT were put up on the website of the NGT on 15.01.2022 and three days thereafter i.e., on 18.01.2022 the impugned directions have been issued. Secondly, he submitted that the fact that in such a short span of time the matters were considered and disposed of by the NGT, in the absence of there being objections filed by the appellants herein nor having heard the appellants herein, would also imply that there has been no consideration by the NGT of the *pros* and *cons* vis-a-vis the recommendations made by the expert Committee and as to whether the directions issued were appropriate to the case of each of the appellant(s) herein or not.

It was submitted that had the appellants herein had an opportunity of filing their objections to the recommendations made by the Committee constituted by the NGT and had the appellants been heard in the matter, possibly appropriate directions could have been issued as against the appellant(s) herein.

In conclusion, learned Solicitor General submitted that the impugned order may be set aside and the matter may be remanded to the NGT for re-consideration of the entire case of the first

respondent herein in compliance with the principles of natural justice, that is, firstly by giving an opportunity to the appellants herein to file their objections, if any, to the recommendations of the Committee constituted by the NGT and secondly, by giving a further opportunity of hearing to the appellants herein.

In this regard, learned Solicitor General relied upon a decision of this Court in *Sanghar Zuber Ismail vs. Ministry of Environment, Forest and Climate Change and Another* reported in (2021) SCC Online SC 669.

6. Learned senior counsel Mr. Sanjay Jain and Mr. Nazki adopted the submissions of learned Solicitor General and also contended that the manner in which the original petition has been disposed of by the NGT in these cases was in gross violation of the principles of natural justice. In this regard, reliance is also placed on another decision of this Court in case of *Kantha Vibhag Yuva Koli Samaj Parivartan vs. State of Gujarat* reported in 2022 SCC online SC 120.

7. The other learned counsel who have appeared, brought to our notice that in the instant case, there were two reports filed and therefore, it was all the more necessary that the said reports had to be considered in order to examine as to whether there were contradictions in them and were in accordance with law.

8. Learned ASG appearing for the respondent No.2 as well as other learned counsel for private respondents also supported the arguments of learned Solicitor General.

9. We find substance in the submissions made by learned Solicitor General, learned senior counsel and learned counsel for the respective parties.

As already noted, the first respondent is the contesting respondent herein who has been served and has failed to appear in these cases.

10. The directions issued by the NGT have been extracted above. The aforesaid directions are in light of the recommendations made by the expert Committee *vide* two reports submitted to the NGT. It is noted that the NGT has extracted the report/s as well as the recommendations at paragraphs 14-16 of the impugned order and has observed as under:

> **"14. Points for determination are remedial action against pollution due to failure to scientifically manage and utilise the flyash, accountability for damage due to breach of Rihand reservoir and due to breach of ash pond, resulting in deaths and injuries and damage to the crops and environment. As already mentioned, legacy fly ash is 1670.602 Million Tonnes as on 31.12.2021 which has potential for serious damage to the environment as shown by incidents of dyke breaches contaminating sources of water and air pollution making industrial areas critically polluted. Air control devices are not installed in many TPPs. There are incidents of deaths, injuries and loss of flora and fauna.**
>
> **15. We have considered the data furnished in the reports furnished in pursuance of earlier orders of this Tribunal dated 04.11.2020 in OA No. 117/2014, 14.07.2020 in OA No. 164/2018 and 29.6.2020 in OA No. 148/2020, including the recommendations for remedial action. The compliance status as projected in the reports of the Joint Committees/Oversight Committees shows huge gap in storing, handling, management and utilization of fly ash and consequential continuing damage to the environment and public health. Such huge gaps are patent from the recommendations part in the reports. Deficiencies noted in respect of some individual TPPs appear to be of representative nature and may exist in almost all TPPs, unless shown otherwise on the ground and not in the form of self-serving denial. In the light of the said recommendations, further remedial action needs to be taken to enforce the principle of sustainable development under section 20 of the NGT Act. The recommendations are reproduced below:**
>
> > **"M/s NTPC Limited Shakti Nagar Sonbhadra:**
> >
> > **Recommendations of the Committee**
> >
> > **xxx**
> >
> > **M/s NTPC Limited Rihand Super Thermal Power (Power Plant)**

Recommendations of the Committee

xxx

M/s Anpara Thermal Power Plant (Power Plant)

Recommendations of the Committee

xxx

M/s Anpara 'C' Lanco Thermal Power Station

Recommendations of the Committee

xxx

M/s Renusagar Thermal Power Plant

Recommendations of the Committee

xxx

M/s Obra Thermal Power Station (Power Plant)

Recommendations of the Committee

xxx

Coal Mines of M/s Northern Coalfields Limited (NCL)

1. NCL Dudhichuwa Project, Sonbhadra

Recommendations of the Committee

xxx

2. NCL Bina Project, Bina, Sonbhadra

Recommendations of the Committee

xxx

3. NCL Krishna Shila Project

Recommendations of the Committee

xxx

4. M/s NCL Kakri Project, Sonbhadra

Recommendations of the Committee

xxx

5. NCL Khadia Project Sonbhadra

Recommendations of the Committee

xxx

Aluminum Smelter: M/s HINDALCO Industries Ltd., Renukoot, Sonbhadra

Recommendations of the Committee

xxx

M/s Grasim Industries Limited Chemical Division, Renukoot, Sonbhadra

Recommendations of the Committee

xxx

M/s Birla Carbon India Pvt. Ltd., Renukoot, Sonbhadra

Recommendations of the Committee

xxx

Stone Crusher

Recommendations of the Committee

xxx

A. Thermal Power Plants (TPPs) and Industries

B. Coal Mines of M/s Northern Coalfields Limited (NCL)
C. Stone Crushers
Recommendations"

16. From the above, it is seen that there is a long way to go for protecting environment and public health. The failures of the TPPs are alarming. We find no reason not to accept all the recommendations and to direct remed1al action. Thus, all recommendations are accepted and further remedial action is directed to be taken by the statutory regulators which also be overseen by the joint Committees of CPCB, State PCB and the jurisdictional District Magistrates, with CPCB and State PCBs being nodal agencies. Quarterly reports may now be filed with the MoEF&CC to be considered by the Coordinating Committee being hereby constituted."

11. In other words, the NGT has simply accepted the recommendations as remedial action suggested by the Committee but the same is in the absence of there being objections filed by the appellants herein who were the respondents before the NGT and without giving any hearing to them and against whom directions impugned in these cases have been passed by the NGT. We find that the procedure adopted by the NGT is an instance of violation of the principles of natural justice. Section 19(1) of the NGT Act, 2010 reads as under:

> **"19.(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice."**

At this stage, we may also observe that the recommendations made by an expert Committee are not binding on the NGT, they are only by way of assistance to enable the NGT to arrive at a correct decision in the matter.

12. In this regard reliance may be placed on paragraph 7 and 8 of the judgment of this Court in *Sanghar Zuber Ismail* (supra) wherein it has been stated as under:

"7. Having regard to the nature of its appellate power, the NGT has to apply its mind to the substantive grounds of challenge. The NGT has merely based its conclusion on the statement which has been made by the project proponent and has not conducted an independent appraisal of the grounds of challenge.

8... the NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction. Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal."

13. Furthermore, in *Kantha Vibhag* (supra), this Court had criticized the practice of delegation of core adjudication to the joint committee:

15. It is first important to differentiate expert committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. The precedents of this court unanimously note that courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly arbitrary or mala fide. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders.

16. Sections 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. In Hanuman Laxman Aroskar v. Union of India9, a two- Judge Bench of this Court noted that the NGT is an expert adjudicatory body on the environment. The Court held:

> **"133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment...**
>
> **134. NGT is an expert adjudicatory body on the environment."**

17. The NGT does not have a dearth of 'expertise' when it comes to the issues of environment.

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

19. The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function. Thus, the order impugned in the appeal cannot be sustained. The consequence of the impugned order is to efface the meticulous exercise which was carried out by the earlier Benches. Valuable time has been lost in the meantime and crucial issues pertaining to the environment in the present case have been placed on the back-burner."

14. In a recent landmark decision, *Madhyamam Broadcasting Limited v. Union of India (2023) SCC Online 366*, the principles of natural justice have been crystalized in the words of Hon'ble CJI-Dr Dhananjaya Y Chandrachud as under:

> **"53. …The facet of *audi alterum partem* encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness…."**

15. A reading of the above, clearly indicates that the NGT is a judicial body and therefore exercises adjudicatory function. The very nature of an adjudicatory function would carry with it the requirement that principles of natural justice are complied with, particularly when there is an adversarial system of hearing of the cases before the Tribunal or for that matter before the Courts in India. The NGT though is a special adjudicatory body constituted by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance with the principles of natural justice as envisaged in Section 19(1) of the Act.

16. 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.

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.

17. 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.

18. We have perused the impugned order of the NGT and particularly paragraph '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 15.01.2022 and

the final order of the NGT was passed three days later on, i.e. 18.01.2022. 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 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.

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

.....J.
(B.V. NAGARATHNA)

.....J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
JULY 05, 2023