

N.D.H.: 21.10.2024

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 833 OF 2024**

IN THE MATTER OF :

VIPIN KUMAR

.....APPLICANT

VERSUS

UTTARAKHAND POLLUTION CONTROL
BOARD AND OTHERS

.....RESPONDENTS

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Place: New Delhi**Date:** 19.10.2024

FILED BY:


(GAURAV AGARWAL)

Advocate for Respondent No.5 & 6

GRV LEGAL
Advocates and Legal Consultants
O-703, Aditya Mega City,
VaibhavKhand, Indirapuram,
Ghaziabad, U.P. NCR- 201014
Mob.: 8802911392
Email. : gaurav@grvlegal.in

**BEFORE THE NATIONAL GREEN TRIBUNAL
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UTTARAKHAND POLLUTION CONTROL
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**SHORT REPLY/ PRELIMINARY OBJECTIONS
ON BEHALF OF RESPONDENT NO. 5 AND 6
TO ORIGINAL APPLICATION**

1. That the Applicant herein has filed the instant Original Application against the answering Respondent challenging the Consolidated Consent to Operate and Authorisation (CCA) dated 07.06.2024 granted by the Uttarakhand Pollution Control Board.
2. That before submitting reply to the allegations made by the Applicant in the Original Application the answering Respondents raises the preliminary objections to the maintainability of the present application as under :
3. That the Applicant has a statutory right to challenge the consent order of the Respondents before the Appellate Authority in Appeal u/s 31 of the Air Act. However, the Applicant has filed the present Original Application invoking the original jurisdiction of the Hon'ble Tribunal seeking quashing of the consent to operate granted in favour of the Respondents. Hence, present OA invoking the original jurisdiction is not maintainable as there is a statutory remedy of Appeal before the Appellate Authority u/s 31 of the Air Act.

4. That in case of **Athippa Chemicals Pvt. Ltd. v. Puducherry Pollution Control Board, O.A. No. 30 of 2011, decided on 14.12.2011** this Tribunal has held that where there is right of Appeal under the statutory provision of Act or Rules, Original Application is not maintainable before the Tribunal. This Tribunal in the said case dismissed an Original Application against the order of the Puducherry PCB challenged directly before the Tribunal in OA instead of filing of Appeal u/s 31 of Air Act before the Appellate Authority. The aforementioned judgement clearly covers the present issue.
5. That there are catena of judgement of this Hon'ble Tribunal wherein the Original Applications are dismissed on ground of maintainability whereby the Applicants chose to challenge the Environment Clearance by invoking Original Jurisdiction of this Tribunal and not by way of Appeal.
 - **Yashovardhan Shandilya Sharma v. Union of India O.A. No. 54 of 2019 (CZ), decided on 30.05.2022.**
 - **Abhishek Chaurasia v. M/s Grasim Industries Ltd. (Staple Fiber Division) and Others O.A. No. 120 of 2024(CZ) decided on 29.05.2024.**
6. That this Tribunal under its original jurisdiction has powers to grant relief, compensation and restitution as provided in section 15 of the NGT Act. Under the said section the Tribunal has can pass orders in respect of the following only :
 - “**15. Relief, compensation and restitution.**
 - (1) The Tribunal may, by an order, provide,-
 - (a) relief and compensation to the victims of pollution and other environmental damage arising under the

enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

- (b) for restitution of property damaged;
- (c) for restitution of the environment for such area or areas, as the Tribunal may think fit.”

In light of the provision u/s 15 of the NGT Act, no orders quashing or cancelling the consent to operate can be passed by this Tribunal, being in Original Jurisdiction. The said power can be exercised, however, only in case of Appeal. Hence, the Original Application is not maintainable for the reliefs claimed.

7. That it is further submitted that the Original Application seeking an order for shutting down of the brick kilns being in violation of the sitting criteria is also not maintainable being barred by limitation. Section 14(3) of the NGT Act clearly provides that *No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.* The language of the provision clearly suggests that there is concept of continuing cause of action as the legislature in its wisdom has provided a outer limit of six months from the cause of action arising first. Hence, in present case the brick kiln of the answering Respondent having being established in 2020, the cause of action first arose on 22.02.2022 as soon as the sitting criteria was notified and the six months expired on 22.08.2022. Hence, the original Application is beyond limitation and not maintainable for this reason also.
8. That in **Windsor Realty Pvt. Ltd.v. Secretary MOEF, W.P. No. 594 of 2015, decided on 09.06.2016** the High Court of

Judicature at Bombay has held that the concept of continuous cause of action is alien to this Tribunal. The High Court has held that :

“35. A bare perusal of the said section clearly discloses that period of limitation is six months from the date on which the cause of action first arose. Prima faice, therefore it cannot be interpreted by any stretch of imagination that it would arise from the date of knowledge of the original applicant of the alleged violation taking place or from the date on which the Environmental Authorities were informed about violation and inaction on their part. There appears to be a lot of confusion in the mind of NGT Bench, Pune on various aspects of continuous cause of action. Perusal of the said Section indicates that the concept of continuous cause of action cannot apply to the complaints which are filed before the NGT because had it been so, the legislature would not have stated that the limitation would be six months from the date on which the cause of action for such dispute first arose. If the interpretation which is sought to be given to the provision by the NGT Bench, Pune in the impugned order is accepted, the complaint could be filed by the aggrieved person at any point of time, claiming that he came to know about the violation after 10 or 20 years. At the same time, if there is any violation of the provisions of the Environment (Protection) Act, 1986, the same have to be addressed and looked into. The only question is by which Authority.”

9. That invoking of the original jurisdiction is not legally justified for another reason also that the order in Appeal u/s 31 of Air Act is appealable before this Hon'ble Tribunal u/s 31B of the Air Act read with section 16(f) of the NGT Act 2010. In the event this Hon'ble Tribunal entertains the present O.A., the Respondent will lose his valuable right of appeal before this Tribunal against the order of Appellate Authority. Hence, for the aforesaid reason also the Original Application filed by the Applicant is not maintainable.
10. That availability of alternative remedy of Appeal in Appellate Jurisdiction is a bar to the invocation of the Original

Jurisdiction. The Hon'ble Supreme Court has decline to entertain even a petition for special leave u/a 136 of the Constitution of India, where there is an alternative remedy of Intra-Court Appeal.**Farukhabad Gramin bank v. Ashok Saxena (2007) 15 SCC 206.**

11. That Supreme Court has also held against the jumping of a stage of Appeal and approaching directly to higher forum in appeal. The Supreme Court has declined to entertain petitions for special leave against the orders of the Courts below directly before it without exhausting the remedy of Appeal before the High Court. However, in present case the Applicant has not only exhausted his remedy before the forum below but has altogether invoked original jurisdiction of this Tribunal which is per se illegal and hence the Original Application is not maintainable. **Shin-Etsu Chemical Co. Ltd. Vindhya Telelinks Ltd. 2009 (14) SCC 16.**
12. That the present Original Application is also not maintainable for the reason that the Consent to Operate and Authorisation (CCA) dated 07.06.2024 was granted by the Uttarakhand Pollution Control Board following the direction of the Hon'ble Supreme Court dated 29.04.2024. There is no violation of the order of this Tribunal dated 12.10.2023 as the Hon'ble Supreme Court by order dated 29.04.2024 has disposed of the Civil Appeal against the order dated 12.10.2023 directing the UKPCB to decide answering Respondents application on its own merit independently without being influenced by this Tribunal's order. It was held by Supreme Court that :

“...we deem it appropriate to direct the said authority to reconsider the application of the brick kiln owner (Jai Mata

Brick Field) on merit and independently, without being influenced by any of the observation in the impugned order dated 12.10.2023 in the OA No. 341 of 2023....”

13. That it is, therefore, prayed that the present Original Application be dismissed for the reason aforementioned, i.e., being not maintainable having alternative remedy of Appeal before the Appellate Authority.
14. That the answering Respondent submits that the present short reply is being filed limited to the aspect of the Preliminary Objection to the Original Application only. The answering Respondent reserves its right to file a detailed reply to the allegations of the Original Application as may be required in future.

JAI MATA BRICK FIELD
Respondent no. 5

And

GAGAN BRICK FIELD
Respondent No. 6

Through


(GAURAV AGARWAL)
Advocate for Respondent No.5 and 6

GRV LEGAL
Advocates and Legal Consultants
O-703, Aditya Mega City,
VaibhavKhand, Indirapuram,
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BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 833 OF 2024

IN THE MATTER OF :

VIPIN KUMARAPPLICANT
VERSUS
UTTARAKHAND POLLUTION CONTROL
BOARD AND OTHERSRESPONDENTS

AFFIDAVIT

I, Vipul Kumar, aged about 42 years, S/o Sri Chander Pal Singh, R/o 168. Gadanpura, Kailwara Kalan, Muzaffarnagar, Uttar Pradesh, presently at New Delhi, do hereby state on solemn affirmation as under:

1. That the deponent is the Partner of the Respondent No. 5 in the present Original Application as such I am well conversant with the facts and circumstances of the present case and hence, competent to swear this affidavit.
2. That I have gone through the accompanying Short Reply from para 1 to 14 and say that the contents thereof are true and correct to the best of my knowledge and belief and I believe the same to be true.

Solemnly affirmed on this 19th day of October, 2024 at New Delhi

Chander Pal Singh
I identify the deponent who has
Signed/ Put T.I. in my presence

Vipul Kumar
DEPONENT

VERIFICATION

19 OCT 2024

Verified at New Delhi on this 19th day of October, 2024 that the contents of my above affidavit are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

SR. NO. 7516

Vipul Kumar
DEPONENT



ATTESTED
A.N. Singh, Adv.
Notary Public
Govt. of India, New Delh

19 OCT 2024

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A.N. Singh, Adv.
Notary Public
Govt. of India, New Delh

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.....APPLICANT

VERSUS

UTTARAKHAND POLLUTION CONTROL
BOARD AND OTHERS

.....RESPONDENTS

AFFIDAVIT

I, Adesh Kumar, aged about 53 years, S/o Sri Jagpal Singh, R/o Manna Khedi, Haridwar, Uttrakhand, do hereby state on solemn affirmation as under:

1. That the deponent is the Partner in the Respondent No. 6 in the present Original Application as such I am well conversant with the facts and circumstances of the present case and hence, competent to swear this affidavit.
2. That I have gone through the accompanying Short Reply from para 1 to 14 and say that the contents thereof are true and correct to the best of my knowledge and belief and I believe the same to be true.

Solemnly affirmed on this 19th day of October, 2024 at Roorkee

Remy
DEPONENT

VERIFICATION

Verified at Roorkee on this 19th day of October, 2024 that the contents of my above affidavit are true and correct to my knowledge and no part of it is false and nothing material has been concealed therefrom.

Remy
DEPONENT
IDENTIFIED BY
19/10/24
S. S. NATARIA
Advocate
Reg. No. 6934/99-UA-30
Civil Court Roorkee

VERIFIED & ATTESTED

S.K.
(S. K. MAHESHWARI)
Advocate & Notary Public
R.No.-42(5) 2006, Exp Dt.-26/09/2025
Ch.No.-142
Tch. Roorkee, Distt.-Haridwar (U.K.)

19/10/2024

S.R. No. 1293
Time 1.10 AM/PM



VAKALATNAMA

BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI.

OA No. 833/ 2024

IN THE MATTER OF:-

Vipin Kumar

..... Appellant

Versus

Uttarakhand Pollution Control Board & Ors.

..... Respondents

KNOW ALL to whom these present shall come that I, Vipul Kumar, Partner : of Respondent No.5 do hereby appoint

Gaurav Agarwal, Advocate (Enrl No. UP/03872/2009...)
Hasil Jain, Advocate (Enrl No. ...D/2880/2013.....)
O-703, Aditya Mega City, Vaibhav Khand, Indirapuram, Ghaziabad
E-Mail id: gaurav@qrvlegal.in, M: 8802911392

(herein after called the advocate/s) to be my/our Advocate in the above-noted case authorised him:-
 To act appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each court by me/us.

To sign file verify and present pleadings, appeals cross-objections or petitions for executive on review, revision, withdrawal, compromise or other petitions or affidavits of other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents including original documents, to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

The deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner, authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the Power of Attorney on our behalf.

And I/we the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/we undertake that I/we or my/our duly authorised agent would appear in the Court on all hearings and will inform the Advocates for appearance when the case is called.

And I/we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain himself.

And I/we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/we hereby agree that once the fee is paid. I/we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition three years, or part thereof.

IN WITNESS WHEREOF I/we do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 6th day of September, 2024

Accepted subject to the terms of fees.


 Gaurav Agarwal
 Advocate
 UP/03872/2009


 Client



VAKALATNAMA

BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI.

OA No. 833/ 2024

IN THE MATTER OF:-

Vipin Kumar

..... Appellant

Versus

Uttarakhand Pollution Control Board & Ors.

..... Respondents

KNOW ALL to whom these present shall come that I, Adesh Kumar, aged about 53 years, S/o Sri Jagpal Singh, R/o Manna Khedi, Haridwar, Uttarakhand Partner in Respondent No.6 do hereby appoint

Gaurav Agarwal, Advocate (Enrl No. U.P./03872/2009...)

Hasil Jain, Advocate (Enrl No. ...D/2880/2013...)

O-703, Aditya Mega City, Vaibhav Khand, Indrapuram, Ghaziabad

E-Mail Id: gaurav@grvlegal.in, M: 8802911392

(herein after called the advocate/s) to be my/our Advocate in the above-noted case authorised him:-

To act appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each court by me/us.

To sign file verify and present pleadings, appeals cross-objections or petitions for executive on review, revision, withdrawal, compromise or other petitions or affidavits of other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents including original documents, to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

The deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner, authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the Power of Attorney on our behalf.

And I/we the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/we undertake that I/we or my/our duly authorised agent would appear in the Court on all hearings and will inform the Advocates for appearance when the case is called.

And I/we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain himself.

And I/we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/we hereby agree that once the fee is paid. I/we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition three years, or part thereof.

IN WITNESS WHEREOF I/we do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 6th day of September, 2024

Accepted subject to the terms of fees.

Gaurav Agarwal Advocate

Signature Adesh Kumar S.K. Maheshwari

Client [Signature]

Advocate & Notary Public R.No. 4249/2006, Ch. No.-142 Teh. onkee Distt. Haridwar (U.K.)

S.R. No. 1294 Time 1:20 AM/PM

19/10/2024

