

BEFORE HONOURABLE NATIONAL GREEN TRIBUNAL  
**PRINCIPAL BENCH, NEW DELHI**

**MISC. APPLICATION NO.02/2020**

IN

**ORIGINAL APPLICATION NO. 64/2016**

**Akhil Bhartiya Mangela Samaj & Ors.**

**v/s**

**Maharashtra Pollution Control Board & Ors**

**BETWEEN:**

- 1 Akhil Bharatiya Mangela Samaj, Applicant  
Parishad, Mangela Samaj Bhawan, At Post  
Satpati, Tal. Dist. Palghar - 401405
- 2 Ashok Thakoji Tandel,  
President of the Applicant No.1  
C-209, Sagar Samrat, Causeway Road; Mahim,  
Mumbai 400016
- 3 Narendra Parushram Naik,  
Secretary if the Applicant No.1  
618/D6 Anand Mangal Society, Sector No.6,  
Charkop, Chandivali, Mumbai 400067
- 4 Vaibhav Ashok Vaze  
President, Youth wing of Applicant No.1,  
Vasgaon, Vazewadi, Post Varor, Taluka  
Dahanu, 401503

**VERSUS**

1. Maharashtra Pollution Control Board, Through Respondents  
Member Secretary, Kalpataru Building, Sion  
Mumbai 400022
2. The Maharashtra Industrial Development,  
Corporation, Udyog Sarathi, Mahakali, Caves  
Road, Andheri East, Mumbai 400093
3. Tarapur Environment Protection Society, Plot  
No.AM-29/Pt, Near Shivaji Nagar, MIDC  
Tarapur, Dist. Thane 401506
4. The State of Maharashtra  
through its Principal Secretary

Environment Department, Mantralaya, Madam  
Kama Road, Nariman Point, Hutatma Rajguru  
Chowk, Mumbai, Maharashtra 400032

5. The Union India through the Secretary,  
Ministry of Env't. Forests & Climate change,  
Paryavaran Bhavan, Lodi Road, New Delhi,  
110003
6. Central Pollution Control Board  
Parivesh Bhawan, CBD-cum-office Complex,  
Arjun Nagar, Delhi 110032
7. Fisheries Department Through the  
Commissioner of Fisheries Dept., Tarapurvala  
Aquarium, Netaji Subhash Marg, Charni Road,  
Mumbai 400002
8. JSW Steel Coated Products Ltd.,  
JSW Centre, Bandra-Kurla Complex, Mumbai  
400051
9. Tarapur Industrial Manufacturers' Association  
(TIMA)  
P-14, Navapur Road, Boisar, MIDC Tarapur  
Palghar 401504

**WRITTEN ARGUMENTS ON LAW POINT**  
**ON THE PRELIMINARY QUESTION OF**  
**MAINTAINABILITY OF OA 64 OF 2016(WZ)**  
**ON GROUNDS OF LIMITATION**  
**UNDER SECTION 15(3) OF NGT ACT 2010**

Sir,

I am concerned for my clients, **Applicants Tarapur Industrial Manufacturers' Association (TIMA) of M.A. 02/2020 in O.A. 64 of 2016** (Respondent no. 9), who have filed written Argument as enclosed. I am hereby serving on you, the advance copy of the entire set of set of written submission, as and by way of advance intimation and formal service upon you. The matter was mentioned on 23.03.2021. This matter is currently listed on **Monday 07<sup>th</sup> June 2021**.

Place: Pune

Date: **17.04.2020**

Filed by:



Adv. Raghunath Mahabal  
**a/w Advocate Amit Agashe (AoR)**  
advagashe@gmail.com +91-9881149090

BEFORE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, AT NEW DELHI

**MISC. APPLICATION NO. 02/2020**  
**IN**  
**ORIGINAL APPLICATION NO. 64 OF 2016 (WZ)**

FILED BY APPLICANT IN M.A. AND RESPONDENT  
NO. 9 TARAPUR INDUSTRIAL MANUFACTURERS  
ASSOCIATION (TIMA) IN O.A. 64/2016

**WRITTEN ARGUMENTS ON LAW POINT**  
**ON THE PRELIMINARY QUESTION OF**  
**MAINTAINABILITY OF OA 64 OF 2016(WZ)**  
**ON GROUNDS OF LIMITATION**  
**UNDER SECTION 15(3) OF NGT ACT 2010**

**Next Date: 07 June 2021**

The advance copies of these Written Arguments are sent to all other Advocates of Applicants and Respondents by email as an abundant precaution.

**[Exhibits referred from A to D in point No. 20 to 23  
in these Written Submissions are the same as  
enclosed in M.A. 02/2020]**

**SUBMITTED WITH UTMOST RESPECT & HUMILITY:**

**1)** Applicant in this Miscellaneous Application (M.A.) and Respondent No. 9 (TIMA) in O.A. 64/2016 (*hereafter referred to as Respondent No.9 (TIMA)*) most respectfully states that this M.A. raises basic preliminary issue and important law point. This goes to the root, in deciding the maintainability of OA and hence *inter-alia* to ascertain the jurisdiction of the Hon'ble National Green

Tribunal to entertain the OA, thereafter adjudicate it and issue Judgement. Hence this MA is ought to be decided at the outset. Applicant accordingly therefore presses this MA with full rigor and urges to first decide on this issue.

**2)** The Respondent No.9 (TIMA) erred in not pressing this issue earlier. Applicant is apologetic about it and seeks apology with folded hands. This point of limitation *ab-initio* questions the jurisdiction of the Hon'ble National Green Tribunal, for the issues prior to 5 years u/s.15 of the NGT Act 2010. Hence, even if this law point was missed by the Applicant, it is most humbly, respectfully and expressly prayed that this issue of LIMITATION has to be looked at, by this Hon'ble Tribunal and the Bench, to ensure as to whether the cause of action has first arisen within the period of limitation as specifically provided in s.14 (six months) and 15 (five years).

**3)** Respondent No.9 states that if this is not done, there shall be huge inconvenience, prejudice and hardship to the Applicant, apart from the right conferred on the Applicant and statutory protection provided by the NGT Act will be denied, without adjudication on this basic initial law point of maintainability. Devoid of proper jurisdiction, the entire further proceedings and adjudication will be devoid of jurisdiction and hence the orders passed shall be *ultra vires*. Hence, to avoid such situation, and since this law point is of utmost importance, the Applicant, as duty bound, is pointing this out this law point at this stage itself, and pressing it, though late by oversight in the past.

**4)** The Respondent No.9 TIMA in MA-2 have therefore raised specific objections based on law point on the question of maintainability of petition under Section 15(3) of NGT Act 2010. It is submitted that OA 64 of 2016 is barred by limitation and hence be rejected.

**5)** The Respondent No.9 would like to place on record before the Hon'ble Tribunal the evidences which prove that "Cause of action for such dispute first arose" before 5 years of limitation period of filing of original application dated 28/04/2016 bearing No. OA/64 of 2016.

**6)** Respondent No.9 state that All Applicants in the OA are local and claim to be the office bearers and members of the registered society. As such they were aware of all the happenings, developments, complaints, litigations, PIL, and judicial orders already passed in the matter. They themselves have recited the history of events in the OA.

**7)** Applicant in OA on page 6, para 5, have made general allegations but have not mentioned the specific cause of action OR as to when it first arose. All these allegations were very much in existence from 2009 and were dealt with before all the available forums and various actions were taken, orders were passed and corrective actions were taken. There is no fresh cause of action or ground to file this present OA. The general bundle of facts and grounds stated in OA are given below. It ought to have specifically mentioned one single specific cause, that first arose within the period of limitation.

- i) application filed to challenge the severe environmental and ecological degradation of the waterbodies in the vicinity of Tarapur MIDC*
- ii) violation of rules and provisions of Water / Air Acts*
- iii) untreated sewage & (unauthorized) effluent, CETP effluent above what has been permitted by MPCB discharged into waterbodies has caused this degradation*
- iv) impacted livelihood of fisherfolk and health of people that live around*

**8)** The Applicant in the OA 64/2016 dated 28.04.2018 and lodged with Registry on 05.05.2016, has stated on affidavit under LIMITATION on Page 26, last para:

*"There is no delay in filing the application as the violations are of a continuous nature. The member industries of the Respondent No.2 continue to discharge untreated effluents into the water bodies in the vicinity and the CETP consistently discharges 34-40 MLD of effluents into the sea at Navapur, far beyond its capacity of 25 MLD."*

**9)** This above statement under justification under Limitation, doesn't deliberately disclose the date of the cause of action and as to when it first arose, so as to be within the period of limitation. Any delay in filing application is denied. There is no reason for delay or even the prayer for condonation of any delay. It is important

to note that the limitation period u/s.14 is only of six months, if there is any application filed raising '*substantial question related to environment*'. The limitation under s.15 is *only for grant of any compensation or relief or restitution of property or environment*.

**10)** This suppression is deliberate as Applicant knew it well that it is beyond the limitation period of even s.15(3) including the grace period. As such, this application is hopelessly barred by limitation and cannot be maintained before the Hon'ble Tribunal. The application will have to be thrown out on the basis of express bar of limitation and this Tribunal doesn't have power to condone the delay beyond the period of limitation. As such Hon'ble Tribunal is duty bound by the provision of the Act to dismiss the application for this serious default. This lapse of time is not a curable defect. Condonation of delay without source of authority will also infringe the protection given to the Respondent No.9.

*15(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:*

*Provided that the Tribunal may, if it is satisfied that the application was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.*

**11)** Respondent No.9 submits that cause of action had first arose, much prior to 5<sup>th</sup> December 2015 and even earlier to limitation period of five years; which is prior to 5<sup>th</sup> December 2010. On this ground alone, this cause now can't be raised before Hon'ble Tribunal as barred by limitation.

**12)** Respondent No.9 submit that, apart from this, the Original Applicant was aware about the date/period as to when it arose and that was prior to December 2010. The Hon'ble Tribunal was very much in existence at that time. No application was filed by the applicant at that time. The remedies with respect to these general facts, grounds, causes and dispute arising out it, were sought before various other Authorities, state & central Board, Court and that cognizance was taken. The actions were taken against defaulters, corrective actions were also taken and directions were issued in this regard only from time to time. In fact, some of the very prayers in this application, were already granted in the past. (e.g., not to grant permission for expansion). As such even assuming that it is a continuous cause, it faults and fails flat on the express statutory provisions as regards to "*.... cause of action for such dispute first arose*".

**13)** The Respondent No.9 also would draw attention of Hon'ble Tribunal to the reports based on scientific facts and data collected by reputed research institutions like Central Marine fisheries research institute, Mumbai and by a Government of India Navaratna company WAPCOS to prove that the Region under review in OA/64 of 2016, at the discharge point of effluent in Arabian sea at Navapur, Nandgaon, Aliwadi, Murbe are free from

pollution as all the environmental parameters are within the permissible limits in November/December 2015 just before filing of application OA/64 of April 2016.

**14)** The Respondent No.09 the Industry Association (TIMA) has filed objections with respect to Expert Committee report invoking section 15(3) of NGT Act 2010.

**15) The main prayers of OA/64 of 2016 are;**

- a) *Since there is no capacity in CETP, untreated effluent is being discharged in the sea hence all the units discharging untreated effluent be closed;*
- b) *No new permissions be granted for expansion of existing units and new units, coming up in the area;*
- c) *Restitution and relief be granted for damages to environment & ecology;*

**16)** The application was filed under Section 14 read with Section 18(1), Section 15, 17 & 20 of National Green Tribunal Act 2010 on 28<sup>th</sup> April 2016 bearing No.64 of 2016.

**17) This Original Application is filed against the backdrop of RTI application dated 15<sup>th</sup> January 2016** and reply by Respondent No.1 which states that treated effluent generated by all these companies are collected in the effluent treated plant of 25 MLD capacity on behalf of MIDC and the entire industrial effluent generally 35 to 40MLD discharged 500 meters into the sea off Navapur.

**18)** The CETP of 20 MLD was there in year 2006 and 25MLD in year 2009. The RTI filed and reply to that doesn't alter the date of '**cause of action first arose**'. It may be date of the Applicants knowledge at the most. The application to qualify under section 15 of NGT Act, it has to be filed within 5 years from the date on which the cause for such compensation or relief first arose. The evidences to prove that the cause of action first arose before 5 years, before filing of application, is as under:

**EVIDENCE NO. (I)**

**19)** The applicants, by their own averments in the application have stated under para '14' and '17' that the pollution levels are beyond the acceptable limits and have stated that in **2009 the CEPI Score was 78.41 which shows the environmental degradation.** Cognizance of the same was taken in 2010 by MPCB/CPCB itself by drawing the Action Plan. As against the above submission, the application is filed in April 2016.

**EVIDENCE NO. (II)**

**20)** Exhibit-A (Referred and enclosed with the M.A. 02/2020 filed): Letter from **MOEF dated 01/05/2009 referring 19(b) notice dated 25.04.2009** wherein a survey was ordered by MOEF regarding alleged violations as have been brought out in OA-64 of 2016.

**EVIDENCE NO. (III)**

**21)** Exhibit-B: Advocate's legal notice dated **06/10/2009 mentioning PIL No.179 of 2009**

to Chairman and Member Secretary MPCB to restrain from grant of consent under zero liquid discharge as there is no adequate capacity at CETP.

**EVIDENCE NO. (IV)**

**22)** Exhibit- C: Copy of the action taken by MPCB against **TEPS RCC No.338 of 2010 dated 14.09.2010**. The copy of the complaint clearly states that there is no capacity in CETP and further consent to operate should not be granted.

**EVIDENCE NO. (V)**

**23)** Exhibit-D: A **PIL No.179/2009 was field with the same prayers were the same as prayed in NGT OA-64/2016**. From the above evidences it is clear that applicant ought to have been aware of the substantial questions raised in respect to pollution in the area from 2009 onwards and hence the application is time barred under section 15(3) of NGT Act 2010.

**24)** A note on environment situation from 2011 to 2020. The Respondent No.09 would like to place on record that there was no fresh cause of action mentioned in the application resulting in to environmental damage during the period starting 2011 to 2020, proven by any Scientific data and inferences from the various surveys done in the region at the discharge point of effluent in the sea i.e. Nandgaon, Murbe, Alwadi. The Industry in MIDC Tarapur have been charged environmental damage charges for the period 2011 to 2020.

a) **WAPCOS Ltd. is a Government of India Public sector Navratna company** providing consultancy in water resources, sea, power and infrastructural related projects guiding and preparing environmental impact assessment studies and carrying out surveys for the same. In the **year 2010 WAPCOS Ltd. was appointed by a private Port infrastructure company** to prepare environmental impact assessment for green field project of Jetty at Nandgaon, Navapur, Aliwadi and Murbe ie. the region under consideration in OA-64 of 2016. WAPCOS Ltd., conducted studies and survey on the same parameters as are done by the Expert Committee in 2020. The relevant portion of the survey by WAPCOS Ltd., are attached in Exhibit-E. The study was conducted in the region in the year 2011, 2012 for Marine ecology, organic metals, heavy metals, PH, sediment quality, petroleum hydro carbons, COD, BOD, etc., All the parameters are below the permissible limits. The study comprising of data in tabular form are enclosed in Exhibit-E mentioned above. Hence the starting period of charging of environmental damage charges in the year 2011 & 2012 do not have any environmental damage in the region.

b) In the year **April-May 2015 Mumbai Research Centre of ICAR-Central Marine Fisheries Institute** carried out a survey on water quality sediment quality biological aspects etc., In the region of Nandgaon, Aliwadi, Murbe, Navapur on all the parameters which are employed by Expert Committee in the year 2020 and found that there is

no environmental damage and all the parameters are within the permissible limits. The relevant portion of the report is enclosed as Exhibit-F. It is pertinent to note that these reports are accepted by MPCB, CPCB & MOEF.

c) **The CEPI Index for MIDC Tarapur in the year 2019 is 53.6 well below the critical level, vis-a-vis the earlier score of 78.41 in year 2009.** The report is compiled by MPCB, enclosed as Exhibit-G. The report applauds the innovative work done by some of the industries in curbing the pollution levels in the area. The respondent No.09 is shocked to see that the same industries have been asked to pay huge environment damage charges by the Expert Committee.

**25) From the above submissions from 2011 to 2019 based on scientific studies and data collected by various agencies it can be inferred that there are no environmental damages in the region as alleged OR fresh cause of action, different than what was there before, which was already dealt with, giving rise to cause of fresh application.**

**26)** Respondent No.9 therefore state that the OA 64/2016 did not mention any fresh cause of action. The bundle of facts, grounds do not point out any one specific cause of action that first arose within the period of limitation. On the other hand, Applicant himself has stated that as continuous cause. Applicants were knowing all the causes. They have already pursued them in the past and have got the remedial orders from CPCB, MPCB, and even from judicial Courts in PIL. MIDC have

taken the action in upgrading the CETP from time to time, from 20 MLD, 25 MLD, ... and so on. However, the cause of action stated has not arisen within the period of limitation of five years prior to date of lodging of the application on 05.05.2016.

**27)** The limitation period provided is the statutory protection from harassment to the Respondent No.9. If the earlier orders from Courts or remedial actions taken by CPCB, MPCB, MIDC are not adequate, they should be speeded-up, implemented without delay. The remedy for the non-execution of the directions of the PIL is somewhere else, but not before this Hon'ble Tribunal. As such the application seeking ***grant of any compensation or relief or restitution of property or environment under this section*** 15, can't be and should be, entertained by this Hon'ble Tribunal.

**28)** Respondent No.9 hereby once again presses for the adjudication on this basic preliminary point of law of the maintainability on the issue of limitation and time-bar; and urges this Hon'ble Tribunal for the speaking order while disposing-of this M.A. 02/2020, after going through all the points submitted and pressed with folded hands.

Place: Mumbai

**Date: 09.04.2021**



**Advocate for (TIMA)  
Applicants in MA 02/2020**