

Ref: - BEFORE THE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH, PUNE

Original Application No.181/2023(WZ)

Hridaynath Yasahwant Tawade

... Applicant

Versus

Union of India & Ors.

... Respondents

To,

Hon'ble Registrar,

National Green Tribunal, Western Zone

Sir,

Be pleased to find the attached Written Arguments along with the Compilation of Photographs and one Judgment in the abovcaptioned matter, with regard to issuing Notice to Respondents and Admission of the matter.

The Applicant intends to make his submissions by way of these Written Arguments and all the clarification sought by the Hon'ble Tribunal by way of the Order dated 5th February 2024 and 20th February 2024 are included therein.

Hence, in view of the above be pleased to take on record the Written Arguments on behalf of the Applicant abovenamed.

Date: - 18th March 2024


Adv. For Applicant

BEFORE THE NATIONAL GREEN TRIBUNAL**WESTERN ZONE BENCH, PUNE****Original Application No.181/2023(WZ)**

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**BEFORE THE NATIONAL GREEN TRIBUNAL
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WRITTEN ARGUMENT

1. Guidelines For Setting up New Petrol Pumps.

As per the Guidelines issued by the Central Pollution Control Board, Delhi (CPCB), by way of its Office Memorandum dated January 7th 2020 and the Addendum there to dated August 16th 2021 (Copy of which is submitted during the hearing held on 5th February 2024) with regard to setting up of New Petrol Pumps, the following is clearly to be followed and implemented by all stake holders: -

- I.** The present Circular deals with the subject of setting up of **new** Petrol Pumps.
- II.** As per sitting criteria of Retail Outlets at clause H), it is clearly stated that in case of sitting criteria of petrol pumps new Retail Outlets shall not be located within a radial distance of 50 meters from i) fill point or ii) dispensing units or iii) vent pipe whichever is nearest from schools, hospitals (10 beds and above) and residential areas.

- III. It is to be considered that the Planning Authority, in this case being CIDCO, the Respondent No.3 has to conduct a detailed study of each Plot which it intends to give on lease to a Petrol Pump. Such a study would be evaluating the Plot by way of survey, research and overall feasibility of the Plot also in view of all the Statutory Compliances including the CPCB Circular dated January 7th 2020 under reference no. B-13011/1/2019-20/AQM/10809.
- IV. Such a study would be the basis of declaring a Plot fit for setting up a New Petrol Pump which would have evaluated the distance of residential areas, schools and the water bodies as per the CPCB Circular. The present Applicant by way of his Right to Information Applications and Appeals has been demanding for such information for the study and its outcome from CIDCO, but no information has been shared by CIDCO with the Applicant. Please Refer to Exhibit - C page no 62 to 85 of the Original Application, page 63 iii) (i) to(vi) specific information has been sought in view of compliance to inter alia CPCB Circular but no information has been available with CIDCO as to know if the Study was carried out or how the Plot was declared fit to set up a Petrol Pump upon. Please refer to Order dated 9th March 2023

passed in First Appeal No. 15/2023 at Page 74 of the Original Application, it is admitted that general procedure was adopted to declare the Plot as fit for setting up of Petrol Pump and there are no documents to show Compliance of study, survey and following of CPCB Circulars.

- V. It is noteworthy that the Right to Information Application made by the Applicant On 31st October 2022 to CIDCO Marketing Department, was forwarded to the following departments for giving reply, i) Planning Department of CIDCO, which sent it to ii) Transport Department, CIDCO.

Sr. No.	Particulars	Exhibit No. and Page No,
1.	RTI Application dated 31 st October 2022 along with Stamp of received fired by Applicant to Marketing Dept, CIDCO	Exhibit - C, Page 62
2.	Letter from Marketing Dept, CIDCO informing the Applicant that the Application has been forwarded to Planning Department, CIDCO, [Letter dated 11 th January2023]	Exhibit - C, Page 66 and translation on Page 67

<p>3. With regard to the information, sought for declaring a Plot suitable for setting up fuel station/Petrol Pump, the Planning Department by way of its Order dated 31st January 2023, forwarded the same to Transport Department, CIDCO to provide the information.</p>	<p>Exhibit - C, Page 68 and 69. [more particular Sr. No. V on page 69]</p>
<p>VI. With regard to reply from Department of Transport, CIDCO, the procedure in the present case if followed by CIDCO for declaration of Plots to be fit to set up Petrol Purep was not given, instead general website link which is unrelated to the subject matter was given in reply. [Exhibit - C, Page No. 77].</p> <p>VII. It is clear that the CPCB Circular which has to be followed by CIDCO to set up new Petrol Pumps, no information has been shared by CIDCO with the Applicant if it has conducted the survey of evaluating the distance from various points on the proposed petrol pump before declaring the plot fit to set up new Petrol Pump.</p> <p>VIII. The Applicant has already submitted the Google Images of the Plots which have been tendered by way of Advertisement dated</p>	

15th August 2021, which show the proximity or rather in most cases sharing the common compound wall with residential buildings. It is submitted that when the Applicant alleges breach of conditions of the CPCB Circular dated 7th January 2020 and CIDCO has not provided any information to the Applicant as to the study and evaluation of the Plot and how it is fit for setting up new Petrol Pump. Hence it is imperative that notice be issued to CIDCO to clarify about the distance of 50metres from all the Plots which were advertised and Tendered for Petrol Pump.

IX. As already averred in the Original Application Page 23, that the Plots as have been Tendered for Petrol Pumps do not fall within the parameters as setup by the CPCB Circular 7th January 2020 and its Addendum dated 16th August 2021.

Sr. No.	Plots.	Circular.
1.	Plot No. 277 A, Sec-3, Ulwe near a Lake) and Plot No. C-6, Sec-12, Kalamboli (near a Creek) both are within 50 meters of lake and the creek can be clearly seen at Exhibit-D,	Addendum dated 16 th August 2021 to CPCB Circular dated 7 th January 2020, Clause a) provides no Retail outlets shall be

	Page No. 90 and Exhibit-J, Page No. 96 of the Original Application.	located within 50 meters of from nearest water Bodies including Lakes.
2.	<p>i. Plot no 1, Sec-8, Pushpak Nagar Exhibit- F, Page No. 92.</p> <p>ii. Plot No 49, Sec-34/A, Khargar Exhibit- G, Page No. 93.</p> <p>iii. Plot No-2, Sec-37, Khargar Exhibit- H, Page No. 94</p> <p>iv. Plot No 132, 143, 144, Sec-9, New Panvel(E) Exhibit- I, Page No. 95</p> <p>all the plots are next to residential buildings in a residential area.</p> <p>v. plot no. 84, Sec-21, Ulwe, google image of which is also Exhibit- E, Page No. 91 of the Original Application, shown that School named Guru International is within 50</p>	<p>CPCB Circular dated 7th January 2020 para H) clearly states that the new Retail Outlets cannot be setup in Residential area.</p> <p>CPCB Circular dated 7th January 2020 para H) clearly states that the new Retail Outlets cannot be</p>

	<p>meters proximity of the said Plot, also a residential building named Aryavart CHSL is sharing the same compound with the plot in question.</p>	<p>setup in close proximity of less than 50 metres to a school and Residential area.</p>
<p>In the event, the Hon'ble Tribunal at this stage demands to ascertain the exact distance between the i) Fill Point, ii) Dispensing Units, and iii) Vent Pipe, [all three being different machineries on a petrol pump] on the plots and in between the Residential Units, School, Lake and Creek, this Hon'ble Tribunal be pleased to issue notice to all the Respondents and allow prayer clause b) so as to enable a Report to be filed before this Hon'ble Tribunal for ascertaining the distance. Where will the fill points, dispensing Units and Vent Pipes be placed it is not for the Applicant but for CIDCO to clarify. Further a clear breach of the CPCB Circular and its Addendum in seen.</p>		
2.	<p>Copy of Tender is already submitted at Exhibit- B, Page No. 35 to 61 of the Original Application, along with the Public Advertisement.</p>	<p>Exhibit- B, Page No. 35 to 61 of Original Application</p>
3.	<p><u>Stage of Plots as on today</u></p>	<p>Photographs annexed to compilation of documents</p>

<p>Presently on</p> <ol style="list-style-type: none"> 1) Plot No. 2, Sec-37, Kharghar. 2) Plot no. 277 A, Sec-3, Ulwe 3) Plot no 1, Sec-8, Pushpak Nagar <p>The board of Indian Oil Corporation Ltd is put up.</p> <ol style="list-style-type: none"> 1) Plot No-84, Sec-21, Ulwe. 2) Plot No 49, Sec-34/ A, Kharghar. <p>These Plots do not have board of allotment to a Petroleum Company but that of CIDCO and its ownership of Plot.</p> <ol style="list-style-type: none"> 1) Plot No 132, 143,144, Sec-9, New Panvel(E). 2) Plot No C-6, Sec-12, Kalamboli. <p>These Plots do not have any board displayed on those Plots.</p>	<p>a) Plot No 277 A, Sec-3, Ulwe. <u>Photograph</u> [Annexed as <u>Annexure - A</u>]</p> <p>b) Plot No-84, Sec-21, Ulwe. <u>Photograph</u> [Annexed as <u>Annexure - B</u>]</p> <p>c) Plot no 1, Sec-8, Pushpak Nagar. <u>Photograph</u> [Annexed as <u>Annexure - C</u>]</p> <p>d) Plot No 49, Sec-34/ A, Kharghar. <u>Photograph</u> [Annexed as <u>Annexure - D</u>]</p> <p>e) Plot No-2, Sec-37, Kharghar. <u>Photograph</u></p>
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		<p>[Annexed as <u>Annexure - E]</u></p> <p>f) Plot No 132, 143,144, Sec-9, New Panvel(E), <u>Photograph</u></p> <p>[Annexed as <u>Annexure - F]</u></p> <p>g) Plot No C-6, Sec-12, Kalamboli. <u>Photograph</u></p> <p>[Annexed as <u>Annexure - G]</u></p>
4.	<p><u>Continuing cause of Action and No delay in filing the present Original Application</u></p>	<p><u>Order passed in Suo Moto Writ petition (C) No. 3 of 2020</u> by the Hon'ble Supreme Court, submitted along with the Compilation of documents submitted by email on 18th March</p>

	2024. [Annexed as <u>Annexure - H</u>]
<p>a) The Advertisement for Lease of Plots for Petrol Pump was published by Respondent No. 3 CIDCO on 15th August 2021 and the last date of submission of the Tender was 20th August 2021.</p> <p>b) It was only around September/October 2022 that the Applicant came to know about the Tendering of the Plots for petrol pumps and when the Applicant himself visited the plots, he saw the apparent breaches and he made the first Right to Information Application on 30th October 2022.</p> <p>c) From 30th October 2022, the Applicant has been in the process of getting the information about the survey about the distance which has to be maintained as per the CPCB Circular.</p>	

- d) The last Order on the First Appeal before Marketing Department is dated 26th May 2023.
- e) The Notice dated 29th March 2023 was issued by Advocate of the Applicant and it was received by the Respondent No. 3 CIDCO sometime in April 2023, the acknowledgment wasn't received by the Advocate and no information is available on the internet against the number of the registered Post, the Postal receipt dated 29th March 2023 is annexed at page 104 of the Original Application.
- f) It is noteworthy that the last reply as received from the Marketing Department of Respondent No. 3 is dated 9th May 2023 and the original Application is filed on 2nd October 2023, within 6 months of arising of the cause of action which may have arisen

in October 2022 but the Applicant has been in the process of gathering information and doing the necessary acts to file the present dispute. Hence it is clear that the Applicant has been in continuously pursuing the cause of action in order to file the present Original Application and hence there has been continuing cause of action from October 2022.

- g) From the date of the last Order from Marketing department CIDCO in First Appeal which was on 9th May 2023, the Original Application has been filed within 6 months therefrom.
- h) Sec 14 (2) Limitation Act 1963 provides that when the Applicant is prosecuting the same cause of action against the same party with due diligence before some other forum or court, such period has to be excluded

from period of limitation. The Applicant has been in process of gathering information by filing proceedings under RTI from 31st October 2022 till 9th May 2023, all the orders and applications have been annexed to the Original Application.

- i) Further as per the Order dated January 10th 2022 passed by the Hon'ble Supreme Court in Suo Moto Writ Petition No. 3/2020, it was held that in cases where the limitation would have expired during the period of 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. in the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days,

that longer period shall apply. (Para III, page 4). Hence in this case, the period from 15th August 2021 till 1st September 2022 is excluded from limitation and the Applicant has applied under RTI on 31st October 2022 and there is no delay. It is also to be considered that the Applicant had no knowledge about the Tender and immediately upon getting knowledge of the same the Applicant has swung into action by seeking the required information.

- j) From the above it is clear that there is no delay in filing the present Application.
- k) In the event, this Hon'ble Tribunal finds that there is any delay in filing the present Application, the Applicant be allowed to file an Application for condonation of delay in the interest of

justice especially in such a case where
there is a clear breach of the CPCB
Circular a liberal view may be taken
by this Hon'ble Tribunal.

Hingans
Applicant.

Date:- 18th March 2024

Place: - Mumbai

Komal

Advocate for Applicant

Completion of Documents is attached
herewith this email.

ANNEXURE E



**Plot No. 2, Sec-37,
Kharghar.**

ANNEXURE B



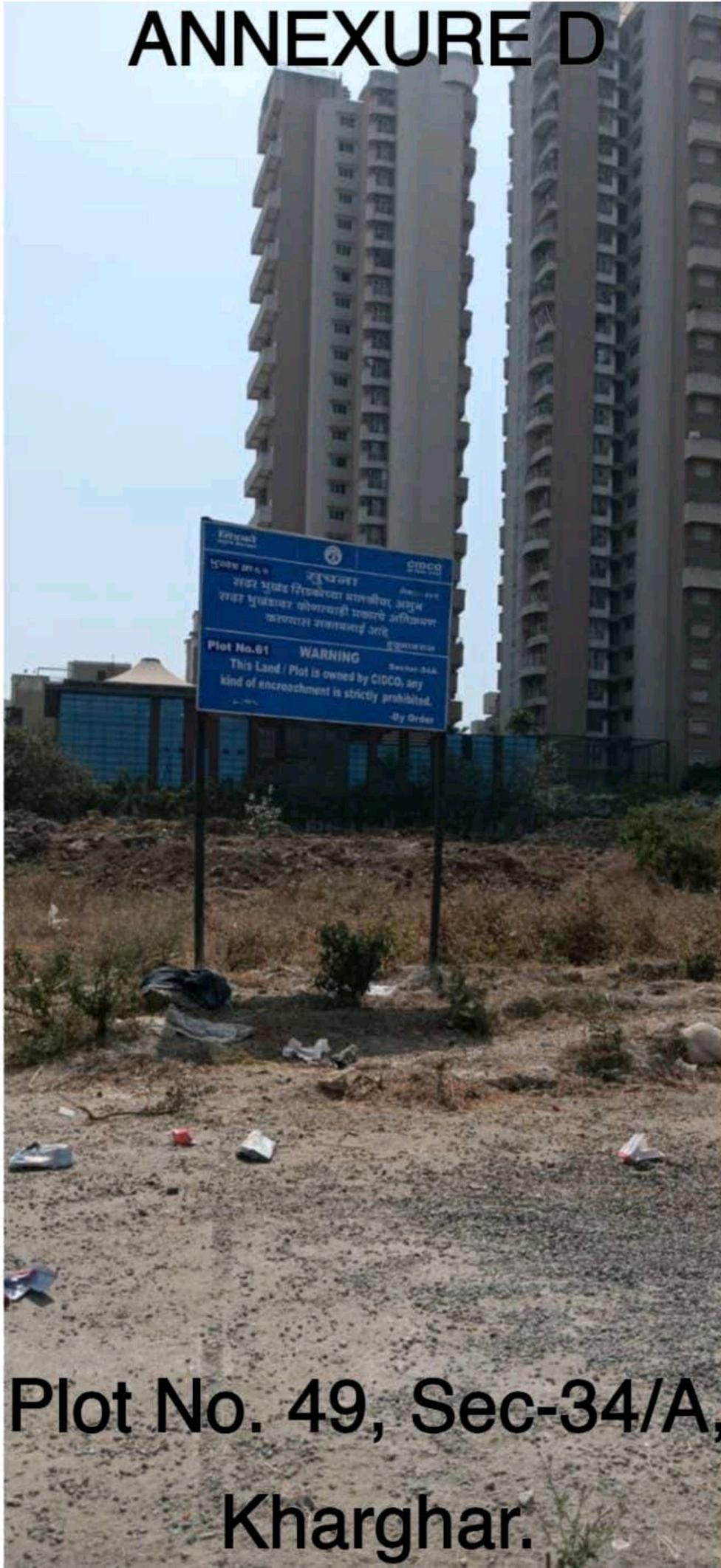
Plot No. 84, Sec-21, Ulwe.

ANNEXURE C



**Plot No. 1, Sec-8, Pushpak
Nagar.**

ANNEXURE D



Plot No. 49, Sec-34/A,
Kharghar.

ANNEXURE A



Plot No. 277 A, Sec-3, Ulwe.

ANNEXURE F



**Plot No. 132, 143, 144,
Sec-9, New Panvel (E).**

ANNEXURE G



**Plot No.C-6, Sec-12,
Kalamboli.**

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ANNEXURE H

1

IN THE SUPREME COURT OF INDIA**CIVIL ORIGINAL JURISDICTION****MISCELLANEOUS APPLICATION NO. 21 OF 2022****IN****MISCELLANEOUS APPLICATION NO. 665 OF 2021****IN****SUO MOTU WRIT PETITION (C) NO. 3 OF 2020****IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION****WITH****MISCELLANEOUS APPLICATION NO.29 OF 2022****IN****MISCELLANEOUS APPLICATION NO. 665 OF 2021****IN****SUO MOTU WRIT PETITION (C) NO. 3 OF 2020****Order**

1. In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic.

2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.
3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court *vide* Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f 15.03.2020 till 02.10.2021.
4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country.

Considering the prevailing conditions, the applicants are seeking the following:

- i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in *Suo Motu Writ Petition (C) NO. 3 of 2020* ; and
 - ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in *M.A. no. 665 of 2021 in Suo Motu Writ Petition (C) NO. 3 of 2020*; and
 - iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.
5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the *M.A. No. 21 of 2022* with the following directions:
 - I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.
- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.
- IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

6. As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn.

.....CJI.
(N.V. RAMANA)

.....J.
(L. NAGESWARA RAO)

.....J.
(SURYA KANT)

New Delhi
January 10, 2022

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ITEM NO.301 Court 1 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SMiscellaneous Application No.21/2022 in MA 665/2021 in SMW(C)
No.3/2020

IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION

(FOR ADMISSION and IA No.1935/2022-APPLICATION UNDER SECTION LV
RULE 6 OF THE SUPREME COURT RULES, 2013)

WITH

MA 29/2022 in MA 665/2021 in SMW(C) No. 3/2020 (PIL-W)(FOR ADMISSION and IA No.3161/2022-APPLICATION UNDER SECTION LV
RULE 6 OF THE SUPREME COURT RULES, 2013 and IA No.3444/2022-
APPLICATION FOR PERMISSION)

Date : 10-01-2022 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s)

Mr. Shivaji M. Jadhav, Adv.
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Mr. Nikhil Jain, Adv.
Mr. Atulesh Kumar, Adv.
Dr. Aman M. Hingorani, Adv.
Ms. Anzu Varkey, Adv.
Mr. Aljo Joseph, Adv.
Mr. Sachin Sharma, Adv.
Mr. Varinder K. Sharma, Adv.
Mr. Abhinav Ramkrishna, AORMr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Himanshu Chaubey, AOR
Mr. Prem Dave, Adv.
Mr. Raghav Agrawal, Adv.
Mr. Toshiv Goyal, Adv.

For Respondent(s)

Mr. K.K. Venugopal, AG
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Ms. Sagun Srivastava, Adv.

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Mr. P. I. Jose, AOR
Mr. Jenis V. Frensis, Adv.
Mr. Prashant K. Sharma, Adv.

Ms. Anindita Mitra, AOR

Mr. Sahil Tagotra, AOR
Mr. Subhro Mukherjee, Adv.

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Ms. Pratyusha Priyadarshini, Adv.
Ms. Nitika Pandey, Adv.
For M/s.Parekh & Co., AOR

M/S. VKC Law Offices, AOR

Mr. Vinod Sharma, AOR

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Ms. Maitrayee Banerjee, Adv.
Mr. Rohit Bansal, Adv.

Ms. Pratibha Jain, AOR

Sh. Soumya Chakraborty, Sr. Adv.
Mr. Sanjai Kumar Pathak, AOR
Ms. Shashi Pathak, Adv.

8

Mr. Divyakant Lahoti, AOR
Mr. Parikshit Ahuja, Adv.
Ms. Praveena Bisht, Adv.
Ms. Madhur Jhavar, Adv.
Ms. Vindhya Mehra, Adv.
Mr. Kartik Lahoti, Adv.
Mr. Rahul Maheshwari, Adv.
Ms. Shivangi Malhotra, Adv.

Mr. Tapesk Kumar Singh, AOR
Mr. Aditya Pratap Singh, Adv.
Mr. Aditya Narayan Das, Adv.

Ms. Binu Tamta, Adv.
Mr. Dhruv Tamta, Adv.

Mr. Siddhesh Kotwal, Adv.
Ms. Ana Upadhyay, Adv.
Ms. Manya Hasija, Adv.
Ms. Pragya Barsaiyan, Adv.
Mr. Akash Singh, Adv.

Ms. Taruna Ardhendumauli Prasad, AOR

Mr. Sibor Sankar Mishra, AOR
Mr. Niranjana Sahu, Adv.

Mr. Abhimanyu Tewari, Adv.
Ms. Eliza Bar, Adv.

Mr. Avijit Mani Tripathi, AOR
Mr. T.K. Nayak, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Court is convened through Video Conferencing.

M.A. No.21 of 2022 is disposed of and M.A. No.29/2022 is
dismissed as withdrawn, in terms of the signed Order.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(Signed Order is placed on the file)

(R.S. NARAYANAN)
COURT MASTER (NSH)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

Original Application No.181/2023(WZ)

Hridaynath Yasahwant Tawade Applicant

Versus

Union of India & Ors. Respondent

Written Argument

Original Application No.181/2023(WZ)

Adv. Komal Kandharkar

Advocate for Applicant

11, Parekh Vora Chamber,

66, Nagindas Master Road, Fort,

Mumbai – 400 023

MAH/2815/2002

Adv. Code I-4947

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