

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE  
ORIGINAL APPLICATION NO. 122 OF 2015 (WZ)  
[EARLIER OA NO. 165 OF 2020 (PB)]**

SAMITA RAJENDRA PATIL & ANR. ... APPLICANTS  
*versus*  
JINDAL STEEL WORKS LTD. & ORS. ...RESPONDENTS

**WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1**

1. The Applicant has filed the captioned OA seeking the closure of the Steel Plant operated by the Respondent No. 1, as well as compensation for the alleged destruction of mangroves on account of the activities of the Respondent No. 1 including the expansion of its jetty.
2. The plant in question is an integrated iron and steel plant which was commissioned in 1996 in a notified industrial zone. The Respondent No. 1 expanded the plant from 5MTPA to 10MTPA in 2015. The plant also has a jetty and conveyor belt system for which permissions including ECs were obtained. ECs were also obtained for the expansion of the said jetty and due permission obtained from the High Court of Bombay vis-à-vis mangroves for the conveyor belt system of the same.

PRELIMINARY OBJECTION: MAINTAINABILITY

3. The instant OA is not maintainable for broadly three reasons:
  - i. The grievance raised therein is effectively a challenge to two ECs for the jetty dated 26.11.2015 (*Vol. I-B Pg. 2275*) and 10.01.2020 (*Vol. I-B Pg. 742*), and an EC dated 25.08.2015 (*Vol. I-B Pg. 722*) for the steel plant, inasmuch as in the course of granting the said ECs, the authorities have dealt with the aspects sought to be highlighted in the instant OA.
  - ii. The thrust of the OA is on the destruction of mangroves. Pertinently, the Respondent No. 1 has obtained permission of the Bombay High Court in W.P. 4894/2020 by order dated 09.07.2020, since its conveyor belt system would be suspended over mangroves (*Vol. I-B Pg. 2327 at 2333*). The same came to be granted by the High Court after a consideration of various permissions of State and

Central authorities including the Mangrove Cell of the State Government and the Maharashtra Coastal Zone Management Authority (*Vol. I-B Pg. 2327 at 2329-2330*). Consequently, the OA effectively seeks a reconsideration of the Order of the High Court by this Hon'ble Tribunal, which is wholly impermissible.

- iii. The OA to the extent that it seeks reliefs with respect to a coke oven plant in prayer clause (f) is bad for non-joinder of a necessary party inasmuch as the said plant is owned and operated by Amba River Coke Ltd. (ARCL) (formerly Geetapuram Coke Company Ltd. and before that, ISPAT Industries Ltd.) which has not been arrayed as a Respondent. This is evident from the EC dated 12.01.2009 (*Vol. I-A Pg. 342 at 347*). Even the Joint Committee specifically makes a mention of "Coke oven battery-I and II (Coke oven plant 1)" (*Vol. I-B Pg. 1320 at 1325*), which is the plants owned and operated by ARCL. The Respondent No. 1 had raised this issue in its Reply dated 24.02.2016 at Para F(i) (*Vol. I-A pg. 317 at 326*). However, the Applicant has failed to implead the said party. Any orders passed with respect to the coke oven plant would thus be contrary to the catena of judgments of the Hon'ble Supreme Court, holding that this Tribunal cannot pass orders without hearing the affected party *vide State of UP v. Uday Education and Welfare Trust*, 2022 SCC Online SC 1469 at Para 95.
4. Since the OA effectively challenges the aforementioned ECs, it is submitted that the OA is not maintainable as it is evidently a subterfuge adopted by the Applicant to overcome the bar of limitation u/s 16 of the NGT Act to challenge the said ECs. This Hon'ble Tribunal has held such an OA, which is effectively a challenge to an EC is not maintainable, in judgment dated 27.05.2016 in *Narinder Shukla & Ors. v. Jagdish Saphiya*, OA No. 135/2015 at Para 28.
5. The OA to the extent that it deals with the steel plant effectively impugns the grant of an expanded EC dated 25.08.2015 to the said plant and is thus *ex facie* not maintainable in view of the fact that an appeal previously preferred by this very Applicant against the said EC has already been dismissed by this Hon'ble Tribunal on 23.05.2017 as being barred by limitation (*Vol. I-B pg. 2305 at 2326*). The Applicants cannot now attempt to circumvent the dismissal and overcome limitation, by means of this OA.

6. As far as the grievance with respect to mangroves, it is submitted that:
- i. The entire gamut of environmental issues relatable to mangroves in the State of Maharashtra, whether under the CRZ Regulations or otherwise, are subject matter of a PIL writ petition, being PIL No. 87 of 2006. Significantly, the orders passed thus far in the said PIL are in the nature of a continuing mandamus, inasmuch as, any development in such mangrove areas is made subject to express prior approval of the High Court *vide Bombay Environmental Action Group v. State of Maharashtra*, 2018 SCC OnLine Bom 2680 at Para 89.
  - ii. The Respondent No. 1, on its part, has duly obtained such prior approval on 09.07.2020 (*Vol. I-B pg. 2327 at 2333*).
  - iii. Consequently, the present OA is an attempt to go behind the orders of the Hon'ble Bombay High Court, which has granted permission to the Respondent No. 1 to operate in the buffer zone for mangroves, by its order dated 09.07.2020 in W.P. (ST) No. 4894 of 2020 (*Vol. I-B pg. 2327 at 2330, 2333*). Significantly, the Hon'ble High Court had the opportunity to review the effects of expansion of the jetty on mangroves after considering documents such as the Mangrove Cell's site inspection report dated 12.06.2019 (*Report at Vol. I-B pg. 2337*).
  - iv. Accepting the contentions of the Applicant in the OA will necessarily amount to going behind the order of the High Court, which is impermissible *vide State of A.P. v. Raghu Ramakrishna Raju Kanumuru*, (2022) 8 SCC 156 (Paras 12-13). Similarly, this Hon'ble Tribunal has in *Pravir Prabhakar Fadte v. MoEF*, Appeal No. 18/2022 (*Para 48*) by order dated 04.05.2023, while relying on *Raghu Ramakrishna* (supra), in an appeal challenging an EC, refused to consider the aspect of air pollution as the same was under consideration before the High Court.
  - v. Interestingly, the Applicant herein, had sought to question the order of the High Court dated 15.10.2019 in WP No. 1643/2019 (*Vol. I-B. Pg. 2701*), in another writ petition being Crim. WP. No. 1107 of 2020 (*Vol. I-B. Pg. 2703*), on the ground that it is contrary to the records of the MCZMA and Respondent No. 1 had suppressed material evidence from the High Court in obtaining the said Order. The said contention came to be rejected by the Bombay High Court by its Order dated 23.02.2024 at Para 12. The Hon'ble High Court noted that if the Applicant had any

grievance, it ought to have challenged the same before a higher forum. Significantly, the High Court also observed in the very same para as follows:

“12... There is no finding by any Court which states that Respondent No. 11 has cut the mangroves although same is alleged by the Petitioners and denied by Respondent No. 11 before various authorities. Therefore, in our view, it cannot be said that order in Writ Petition No. 1643 of 2019 was obtained by fraud or misdeclaration.” [Emphasis added]

7. Lastly, it is pertinent to note that the OA which came to be filed in 2015 contained only 7 grounds. The Applicant has, over the course of the last 7 years, sought to expand the scope of the present Application by raising various issues which have no foundation in the OA and this, without resorting to the procedure of an amendment. It is significant to note that the only provision of the CODE OF CIVIL PROCEDURE, 1908 which has been made applicable, in terms, to proceedings before this Tribunal is Order 6 Rule 17 *vide* Rule 16(7) of the NGT (PRACTICE AND PROCEDURE) RULES, 2011. Hence, it is submitted that, issues not borne from the OA ought not to be considered by this Hon’ble Tribunal.

NO LOSS OF MANGROVES ATTRIBUTABLE TO THE RESPONDENT NO. 1

8. The Committee has failed to consider that there were contemporaneous records to demonstrate that though the mangroves were indeed in existence along the creek, but they were within the knowledge of all authorities, had been considered and were found not to have been affected by the Respondent No. 1’s activities. This is evident from the following:
  - a. An NIO Report dated July 2014, which was prepared and examined by the EAC of the MoEF, prior to the grant of the Jetty EC, specifically records that the mangroves are in existence along the creek (*Vol. I-B Pg. 2440 at 2474*).
  - b. This NIO Report was placed before the EAC of the MoEF, which specifically recorded that though the said mangroves were in existence, they would not be affected by the proposed activities. This is recorded in condition (xiii) in the EC dated 26.11.2015 (*Vol. I-B Pg. 2275 at 2276*).
  - c. Thereafter, when the Respondent No. 1 sought an amendment of the Jetty EC, the MCZMA upon noticing the existence of the mangroves imposed a condition (specific condition (iv)), directing the Respondent No. 1 to obtain an NOC from the Mangrove

Cell confirming that the project is not within a mangrove area or the buffer zone of a mangrove area (*Vol. I-B. Pg. 2335 at 2336*).

- d. Accordingly, the Respondent No. 1 approached the Mangrove Cell, which after carrying out an inspection on 30.04.2019, submitted a report on 12.06.2019 stating that the proposed site is within the 50m buffer zone, but no mangroves were in existence at the proposed construction site (*Vol. I-B Pg. 2337 at 2338*). Significantly, the mangrove cell after examining maps from 2005-2019, records as follows:

“4. Google superimposed map of the proposed site in 2005 and 2019 showed no mangrove trees in the proposed area (Annexure-III & IV).”

[Emphasis supplied]

- e. In view of the observation by the Mangrove Cell that the area was within the buffer zone of a mangrove area, the MCZMA, in its 142<sup>nd</sup> Minutes of Meeting dated 31.12.2019, directed the Respondent No. 1 to seek approval from the Hon'ble High Court (*Vol. I-B. Pg. 3672 at pg. 3674-3675*). Pertinently, this is for the first time that the Respondent No. 1 was asked to obtain the permission of the High Court and hence any suggestion that it ought to have approached the High Court prior to this communication from the MCZMA is untenable.
- f. Accordingly, on 12.03.2020, the Respondent No. 1 filed WP No. 4894/2020 before the Hon'ble High Court seeking its leave to carry out construction activities within the 50m buffer zone from a mangrove area (*Vol. I-B. Pg. 3676 at pg. 3703*).
- g. It was after considering this Mangrove Cell report, among other documents, that the High Court on 09.07.2020 granted permission to the Respondent No. 1 to carry out construction in the mangrove buffer area in WP No. 4894/2020 (*Vol. I-B Pg. 2327 at 2330 [Para 6(6)]*).
9. The aforesaid documents amply demonstrate that the concerned authorities were well aware of the existence of the mangroves, and that the mangroves were not affected by the activities of the Respondent No. 1. In fact, these reports were also placed before the Joint Committee. In view of the law laid down by the Supreme Court in *Rajeev Suri v. DDA*, (2022) 11 SCC 1 at Para 509, as to the threshold for judicial review, of decisions of the EAC, being “*total absence of mind*”, the Joint Committee could not have sat in judgment over the views of expert bodies.

10. It is also significant to note that while the MCZMA has in an affidavit dated 23.09.2016 recorded that certain mangroves have been destroyed on account of dumping, the Joint Committee has specifically observed that the dumping was attributable to the Gram Panchayat, and not the Respondent No. 1 (*Vol. I-B Pg. 1320 at 1325 at Sr. No. 2*).
11. Furthermore, the Regional Forest Officer by a letter dated 03.03.2022 observed that the loss of mangroves is on account of cyclones (*referred to at Vol. I-B. Pg. 1608-1609*).
12. The Joint Committee has alleged destruction of mangroves from 2011 to 2019 by relying on Google Images for the said period, and on this basis, imposed compensation of Rs. 3,28,99,438/- on the Respondent No. 1. Curiously, the Joint Committee also acknowledged that the destruction of mangroves is due to dumping of solid and domestic waste, which in no manner can be attributed to the Respondent No. 1. (*Vol. I-B. Pg 1320 at pg. 2039*)
13. Lastly, it is submitted that the Supreme Court has in *Noida Memorial Complex, In re* (2011) 1 SCC 744 at Para 24 held that if there is other reliable material on record, Google Earth images should not be relied upon. Incidentally, this is the only basis on which the Joint Committee has reached its conclusion (*Vol. I-B. 1320 at pg. 1582*).

#### VIOLATION OF CRZ NOTIFICATION

14. On the aspect of violation of the CRZ notification, the Joint Committee has made an observation at Pg. 1320 at 1389 that the Respondent No. 1 though had obtained the permission of the High Court on 09.07.2020, it ought to have approached the High Court even earlier. It is submitted that the aforesaid chronology would reveal that it is only on 31.12.2019 that the MCZMA imposed a condition to obtain such permission (*Vol. I-B. Pg. 3672 at pg. 3674-3675*) which Respondent No. 1 promptly did by preferring WP No. 4894/2020 on 12.03.2020 (*Vol. I-B. Pg. 3676*).
15. It is respectfully submitted that the Joint Committee has lost sight of the fact that while the CRZ Notification imposes a buffer zone around mangroves only if they meet the

threshold of an area of 1000 m<sup>2</sup>. However, this regime came to be altered in a manner of speaking by the judgment of the Bombay High Court dated 17.09.2018 reported as *Bombay Environmental Action Group v. State of Maharashtra*, 2018 SCC OnLine Bom 2680, whereby a buffer zone of 50m was made applicable to mangroves *per se* i.e., irrespective of whether or not the threshold of 1000 m<sup>2</sup> was met. In other words, a buffer zone of 50m vis-a-vis any and all mangroves came to be introduced by way of this judicial direction applicable to the State of Maharashtra.

16. Significantly, while this new regime of buffer zones was introduced on 17.09.2018, the Respondent No. 1 had previously obtained an EC for the steel plant dated 25.08.2015 and for the Jetty dated 26.11.2015, wherein no condition was understandably imposed with respect to a buffer zone or to obtain permission of the High Court since there was no occasion for the same. Simply put, it is only after 17.09.2018 that the need arose to obtain permission of the High Court to operate in the 50m buffer zone around mangroves, which this judgment imposed.
17. Hence, it is submitted that the Joint Committee has lost sight of the aforesaid chronology while concluding that the Respondent No. 1 ought to have obtained the permission of the High Court even before it actually did.
18. On this aspect, another observation of the Joint Committee is an allegation to the effect that the Respondent No. 1 violated the condition imposed by the MCZMA in its 142<sup>nd</sup> Minutes of Meeting dated 31.12.2019 (*Vol. I-B. Pg. 3672 at pg. 3674-3675*), for the period 2015-2018. This observation it is submitted, with respect, is *ex facie*, illogical inasmuch as a condition imposed in 2019 could not have been violated before its imposition.

#### LOSS OF CREEK NOT ATTRIBUTABLE TO THE RESPONDENT NO. 1

19. While the Joint Committee has alleged that there is a 'destruction' of the creek area to the extent of 0.77 Ha, based on time series analysis of satellite images from 2011 to 2021 (*Vol I-B. 1320 at 1325, 1355*), it is submitted that the same is a natural phenomenon due to the siltation patterns in the creek as evidenced by a 1980 Report in the *Mahasagar Bulletin* published by the NIO (*Vol. I-B. Pg. 2397 at 2407*).

20. Simply put, the change in the creek is a natural phenomenon, leading to receding of the creek, which cannot be termed as 'destruction', and in any case cannot be attributed to the Respondent No. 1.
21. Significantly, the SDO Alibaug has in a report dated 17.01.2022 confirmed that there has been no encroachment of the natural creek by the Respondent No. 1's activities (*Vol. I-B. Pg 1320 at 1356*).

EMISSION REPORTS PREPARED CONTRARY TO NAAQS 2009

22. The allegation with respect to air pollution raised by the Applicant are restricted to the Coke Oven Plant 1 (*see paras 17 & 18 of the OA*) which, it is submitted, is owned and operated by ARCL, and not by the Respondent No. 1 herein. Even the Joint Committee expressly makes a mention of "Coke oven battery-I and II (Coke oven plant 1)" (*Vol. I-B. Pg. 1320 at 1325*) which is admittedly owned and operated by ARCL.
23. As far as Coke Oven Plant 2 is concerned, which is owned and operated by the Respondent No. 1, the same was neither a subject matter of the allegations in the OA nor the observation of the Joint Committee Report as it was only commissioned in 2020.
24. In fact, the distinction between the two Coke Oven Plants is evident from two separate sets of ECs granted for the same. Pertinently, Coke Oven Plant 1 has been set-up and operated based on an EC dated 12.01.2009 granted in favour of M/s Geetapuram Coke Company Ltd. (*Vol. I-A Pg. 342*) which was thereafter transferred to ARCL by a letter dated 02.02.2010 (*Vol. I-A Pg. 347*). Coke Oven Plant 2 on the other hand originally formed a part of the EC dated 25.08.2015 (*Vol. I-B Pg. 722*), which was thereafter transferred to M/s Dolvi Coke Projects Limited, by an EC dated 01.02.2018 (*Vol. I-B Pg. 3705*), which commissioned the same and commenced operations at the said plant in 2020. The EC for Coke Oven Plant 2 has thereafter been transferred from M/s Dolvi Coke Projects Limited to Respondent No. 1, in view of the merger of the two entities, by an EC dated 22.11.2021 (*Vol. I-B Pg. 3712*). Hence, it is evident that the allegations in the

OA or in the Joint Committee report do not relate to the Coke Open Plant being operated by the Respondent No. 1.

25. Nonetheless, the Joint Committee in alleging air quality violations has relied on an emission study carried out only for a period of 2 days. However, the monitoring protocols prescribed under the NAAQS require continuous monitoring to be carried out if there is a breach for two consecutive days or more, to ascertain if there is any violation (*Vol. I-B. Pg. 2410 at 2411*). The Committee, however, has alleged the Respondent No. 1 to be a violator (based on exceedance of PM<sup>10</sup> limits) based on readings for a total period of 2 days only (*Vol. I-B. Pg. 1320 at 1362/1363*).
26. In any case, the exceedance in PM<sup>10</sup> values noticed by the Joint Committee cannot solely be attributed to the Respondent No. 1, especially when all other parameters are found to be within the permissible range, and without considering the impact of other industries around the Respondent No. 1's plant which are very likely to have influence the said results especially given factors such as wind direction (*Vol. I-B. Pg. 2228 at 2248*). In fact, it was on this account that the Respondent No. 1 had suggested that a source apportionment study ought to have been carried out (*Vol. I-B. pg. 2248 at para 53*).
27. Further, the Joint Committee Report alleges non-compliance under the WATER ACT, 1974, the AIR ACT, 1981 and the HAZARDOUS WASTES (MANAGEMENT AND TRANSBOUNDARY MOVEMENT) RULES, 2016, disregarding the fact that the MPCB has already issued a show cause notice to the Respondent No. 1 dated 18.11.2022 under the provisions of the aforementioned Acts for those non-compliances. The Respondent No. 1 has responded to the show cause notice by way of a reply dated 23.11.2022 (*Vol. I-B. Pg. 2412*). The MPCB having not responded to the reply of the Respondent No. 1 is an implicit acceptance of the position stated in the said reply and thus, the show cause notice impliedly stands discharged.
28. This is fortified by the fact that the MPCB has thereafter been renewing consents issued to the Respondent No. 1 and has not raised any objection. Further, the MPCB has not passed any order for contravention of law under the Air Act or the Water Act. This

implies that the Respondent No. 1 has been in compliance with the applicable consents, permission and approvals issued by the competent statutory authority. A consent to operate was also issued to the integrated steel plant by the MPCB as recently as 08.03.2023 (*Vol. I-B. Pg. 2418*).

NO BASIS TO LEVY ENVIRONMENTAL COMPENSATION

29. For the aforesaid reasons, there has been no environmental violation which necessitates the imposition of Environmental Compensation on the Respondent No. 1.
30. The compensation sought to be levied on account of mangrove destruction has been computed from 2011 merely because maps from 2011 onwards have been used as markers to compare subsequent maps. It is submitted that such computation of compensation is flawed since it has been done for a period of 10 years without any logical rationale. A mere inference based on a before and after analysis of satellite images, without attributing any wrongdoing on the part of the Respondent No. 1, cannot be sufficient basis for such imposition, especially when no expert body has found any such destruction nor has any authority attributed such destruction to the Respondent No. 1. In other words, it is not known nor is it identified as to when the alleged destruction occurred and whether the same can be attributed to the Respondent No. 1. This Hon'ble Tribunal in *Vijay Marine Services v. Goa Coastal Zone Management Authority & Ors.*, 2022 SCC OnLine NGT 3241 (Para 24), has held that it is incumbent on the authority to identify the precise violation with timelines before penalising anyone.
31. Similarly, the compensation levied for a period of 1965 days from 21.02.2015 till 09.07.2020 on account of non-obtaining of permission from the High Court for a mangrove area is illogical since the jetty did not involve a mangrove area and accordingly, did not require such permission. However, since the conveyor belts from the plant to the jetty were to be installed within the 50m buffer zone of mangroves, the said permission was duly obtained. It is worthwhile to mention that no hearing was given by the Joint Committee while computing the alleged Environmental Compensation. If the same would have been granted, the present Respondent would have been able to point

out the discrepancies in the calculation with documentary proof thereof. Thus, on this ground also the Committee's observations are incorrect.

32. Furthermore, the formula used by the Joint Committee has been referred to in *Paryavaran Suraksha & Anr. v. Union of India & Ors.*, O.A No. 593/2017 (Paras 14-16) for calculating compensation for specific instances, such as consent condition violations and not for mangrove destruction/breach of buffer zone. In fact, in an admission of the above, the Joint Committee has itself submitted that the aforementioned formula is inapplicable to the facts of the present case (*Vol. I-B. 1320 at 1392, 1413*).
33. In the above conspectus, it is submitted that, the OA deserves to be dismissed.

Dated this 6<sup>th</sup> day of June 2024.



Advocates for Respondent Nos. 1 & 2