

**BEFORE THE NATIONAL GREEN TRIBUNAL**  
**WESTERN ZONAL BENCH AT PUNE**

**ORIGINAL APPLICATION NO. 101 OF 2020**

(Under Section 14, 15 and 20 of the National Green  
Tribunal Act, 2010)

**IN THE MATTER OF:**

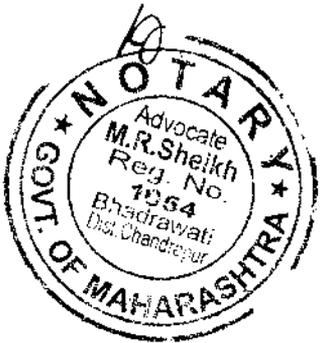
Madhukar Dahule

....**APPLICANT**

**//VERSUS//**

State of Maharashtra and others .... **RESPONDENTS**

**WRITTEN SUBMISSIONS ON BEHALF OF**  
**RESPONDENT NO.3**



Respondent No.3 named above most humbly and respectfully begs to submit, that the present Original Application preferred by the Applicant is absolutely devoid of merits and deserves to be rejected at the very threshold. Respondent No.3 further most humbly submits, that the averments that are not specifically admitted may kindly be deemed to have been denied.

1. It is submitted that in the earlier round of litigation, the Hon'ble High Court, Nagpur Bench, Nagpur vide order dated 13/11/2018 directed the Collector, Chandrapur to consider the controversy and after proper inquiry into the facts, Collector was permitted to quantify the loss if any to the present Applicant and the Parties were further directed to appear before the collector on a fixed date.

2. It is submitted that, as per the order dated 13/11/2018 passed by the Hon'ble High Court, Nagpur Bench, the Collector, Chandrapur Conducted the inquiry and a spot inspection was done by the Collector of the field of Applicant i.e., F.S No.02, on 07/12/2017 in presence of the Applicant, S.D.O Warora, Tahsildar Bhadravati , Block Development Officer , Agricultural Officer of concerned taluka, Sub Divisional Engineer of Irrigation Department , Mandal Adhikari , Gram Adhikari, Gram Sevak and certain officer from W.C.L. and other filed owners. At the time of spot inspection, in addition to the field of the Applicant, F. S No. 6, F.S no.231, F.S No.46/ 1 & F.S No. 15 were also inspected, statements of the Applicant and other land

owners were also recorded. It was observed in the said inspection that, "Natural Nala" is flowing through the field of the Applicant. It is further observed that, in a situation of flood there might be a possibility of overflowing of nala and due to the flood, possibility of damage to the crops may



arise. Therefore, considering all the possibilities, Respondent W.C.L was directed to carry out "Deepening Work of the Shirna Naala so that any such possibility of flood and damage to the crops can be avoided.

3. Respondent W.C.L. initiated the process of Deepening and after following due procedure, the Deepening work of Shirna naala for the length of 1850m of about 1 to 2 feet was completed on 31/05/2018 i.e., before the onset of monsoon season. Documents in relation to Deepening work carried out by the respondent are part of the record received by this Hon'ble Tribunal from the Hon'ble High Court. It is further submitted that, Respondent No.3 is maintaining day to day records of water level of Koradi Nalah situated at New Majri UG to OC mine. Perusal of the records maintained by the Respondent

No.3 which forms part of the record show that the water level of the Koradi Nallah has more or less remained constant through the monsoon season and there are very minor fluctuations in the said water level. Also, those fluctuations are only due to the Heavy Rain which were received for a day or two during the monsoon season and keeping aside these minor fluctuations, water level of the Koradi Nallah has remained almost constant during the entire monsoon season.

4. It is further submitted that, firstly, Koradi Nallah is a seasonal Nallah and not a river as mentioned by the present Applicant and the field of the Applicant is not adjacent to the Koradi nallah and distance between the field of Applicant and diverted nallah is about 190-200 m. Also, it is pertinent to note that, the Applicant has filed a complaint with the office of Respondent WCL on 06/12/2015 alleging that loss has been incurred by the Applicant due to the diversion of said Nallah, but the work of diversion itself was started by the Respondent WCL in the month of May 2016. Therefore, it is not at all possible that the loss, if at all any,



7. It is further submitted that, a 4 member committee was constituted by the Respondent No.1 to carry out a spot inspection of the field of Applicant on 28/07/2017. Perusal of the said report shall clearly reveal that no sign of water back flow has been observed from the diverted Koradi Nallah towards the land of the Applicant and rainwater is naturally collected in the field of the Applicant during the normal rainfall.

8. It is further submitted that, due to constant filing false complaints by the Applicant that his crops are being damaged due to the heavy rains in this monsoon and as the Applicant was constantly making representations to various authorities, again a 3 member committee was constituted to see if there is any truth in the baseless allegations which are made by the Applicant and to see if at all any loss is caused to the crops the Applicant due to the heavy monsoon. That the copy of Spot Inspection Dated 24/08/2018 forms part of the record received from the Hon'ble High Court. A perusal of the said report shall reveal that no loss has been caused to the crops of the



caused to the present Applicant's crop is due to the act of diversion on koradi Nalah. Therefore, the allegation made by the Applicant is absolutely baseless and devoid of any merit.

5. It is submitted that the natural topography of the land of the present Applicant & the adjoining agriculture land is such that, the rain water naturally gets collected in the land of Applicant making it partly submerged during the normal rainfall. And in addition to the said fact, "Natural Nallah" also flows through the field of the Applicant due to which in every rainy season, water gets accumulated in the field of the Applicant and this accumulation has nothing to do with the diversion of Nalah.

6. That the diversion work of Shirna Nalah was designed scientifically by the Central Design Organization, Resource Department Nasik, a government authority. Therefore, it is absolutely wrong to say that the submergence of water in the field of Applicant is due to the act of diversion carried out by the Respondent No.3.

CIPC, Chandrapur dated 21.06.2016. Further, the act of diversion was undertaken due to the "Public Health exigency" pointed out by Tahsildar, Bhadrawati considering the upcoming monsoons.

11. It is pertinent to mention here that the committee came to the inference that, WCL had reached to the level of production in opencast mining where it disturbed the natural course of Koradi nalla through their mining lease area and there is no other alternative than diversion before monsoon. Further, WCL kept about three months (From submitting the application on 11.04.2016) to complete the diversion work including the time for getting the NOC from the Irrigation Department. There is a lot of gap of time from approach of WCL to Central Design Organization (CDO) for obtaining design of diverted section of Koradi Nalla to WCL on 29.03.2016 i.e. about almost 5 years and then only about three months from submitting application from NOC to completion of diversion work. The Committee also stated in their report that it was informed by the WCL



Applicant due to any action of diversion carried out by the Respondent No.3.

9. That this Hon'ble Tribunal vide order dated 02.06.2021 constituted a committee to look into the extent of damage to the environment and to the fields of the applicant and suggest remedial measures over and above the measures, if any, taken by the Respondent W.C.L. so far, including the amount of compensation on polluter pays principle to cover the cost of restoration and compensation to be paid to the victims. It is submitted that the said report is submitted before this Hon'ble Tribunal in the month of January 2022.

10. In the humble submission of Respondent No.3, the Field officer from the office of Superintendent Engineer (CIPC, Chandrapur) inspected the site on 02.05.2016 ( i.e. prior to actual date of diversion between 17.05.2016 to 17.06.2016) and recommended the proposal for diversion of Koradi Nalla. The recommendation can be inferred from the letter issued by Assistant Superintending Engineer



subsequently, the agreement for the work was signed between WCL-Majri Area & CDO, Nashik on 18/05/2015. That the field officers of CDO, Nashik visited the site on 17/06/2015 and submitted the design of diverted section of Koradi Nalla to WCL on 29/03/2016.

13. As the process of securing NOC for nalla diversion involves multiple procedural activities and whereas the diversion of Koradi Nalla was eminent for production of Coal in FY 2016-17, thus, significant efforts were made during the latter part of the period emphasized by the committee for securing the permission of Nalla diversion. It is submitted that the W.C.L. operates all Major opencast mines in Chandrapur and Yavatmal districts of Maharashtra. Thus, a huge quantum of man and machinery is operational with W.C.L. The quantum of excavation involved in the diversion as per the design of CDO Nasik is in 0.30 MCUM to 0.54 MCUM & the OB removal by New Majri UG to OC in FY 2016-17 is 3.98 MCUM with 1.20 MT Coal production that is equivalent to a composite



that diversion of work is completed in one month (From 17.05.2016 to 17.06.2016). However, the committee is of the opinion that the completion of diversion work seems to be not possible within one month.

12. It is submitted that the former course of nalla and the land proposed for diversion of nalla both were in possession of WCL. That mining is a sequential activity and it advances to the dip section of the mine from the side of access trench. The stripping process i.e., removal of overburden is done in advance of Coal excavation process. It is submitted that though EC for New Majri UG to OC mine was secured in 2011, the mine commenced production in year 2015-16 and till FY 2016-17 it reached to the point where diversion of river was of the imminent need to proceed for the production of Coal. That to perform the act of diversion, the application for design of diverted canal was made to CDO, MERI-Nashik on 02/06/2011 by the Respondent no.3. That the approval from Director General, MERI Nashik was secured on 05/10/2013 and





15. Also, it may be seen that the remarks quoted by the committee are not factual, it reflects the observable assumptions of the committee. While, the execution of the diversion process has been taken up as per the written design recommendations provided by a scientific institute I.e. CDO, MERI, Nashik.

16. It is observed by committee that the flooding in adjacent areas along the Shirna nalla during the monsoon period is a natural occurrence, due to heavy inflow from the catchment area. Further it was also observed that the area of influence is small and that there is no visual impact observed on environment during the site visit due to diversion. The committee further is of the opinion that there is no matter of pollution and damage thereof and stated that as per the report from the member of irrigation department, there were regular instances of flooding during Monsoon season in Shirna River. That the Committee further observes that the crop damage may not be due to backwater and flooding because of diversion of

production of approx 4.75MCUM. Thus, in the humble submission of the Respondent No.3, the opinion of committee that "completion of diversion work seems to be not possible within one month" is baseless and without any substance. Further, no proof and documentary evidence are considered by the committee while delivering the opinion.

14. It is submitted that the Committee further observed that the sectional area seems to be insufficient to carry the combined discharge of Shirna River and Diverted Koradi River. The opinion of the committee contradicts with the design approved by the scientific agency i.e. CDO, Nashik, that designed the diverted canal considering the combined discharge of Shirna and Koradi Nalla. The flooding of river is caused due to heavy rainfall in the catchment of both nalla and nothing to do with diversion of Koradi nalla. It is submitted that the Applicant's contention that flooding of his field is caused due to diversion of Koradi Nalla is not based on sound facts.

only scientific agency in Maharashtra that is entrusted for designing canals in case of diversion of nalla or river. The institute is under Water Resources Department, Government of Maharashtra. The design from CDO Nashik was secured vide CDO/DAM/ED-2/(59)/90/2016 Dated 29/03/2016. Thereafter, the application for executing river diversion as per the design criteria prescribed by CDO, Nashik was submitted to SDM, Warora as well as Supt. Engineer Chandrapur Irrigation circle on 11/04/2016. The field officer from VIDC, Chandrapur visited the site on 02/05/2016.

19. As at the time of diversion the onset of monsoon was expected and as Coal production from the mine was necessary for the nation and was in the interest of general public, the diversion was planned to be carried out at the earliest. During a meeting at Tehsildar Bhadravati the matter of diversion arouses concerning the fact that "There were chances that if the diversion is not carried out before the rains, the partial work of blockage of natural course of

Koradi nalla carried out by WCL and that the compensation, as claimed by the applicant in the petition / application, is not appropriate.

17. It is submitted that the Committee further observed that W.C.L. has carried out diversion of Koradi Nalla without requisite NOC from Irrigation Department under provisions Maharashtra Irrigation Act 1996 / Vidarbha Development Corporation Act 1996 for which WCL has applied from Irrigation Department. It is submitted that W.C.L. has carried out the work of diversion of Nalla as per instructions from Tahsildar Bhadravati based on the meeting at this office on natural calamity, and the committee finds its violative of EC specified condition per EC granted by MoEF&CC on 18/02/2011.

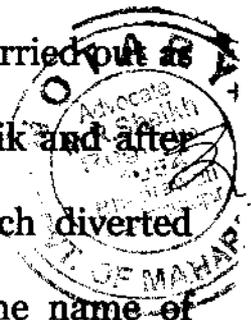
18. In the humble submission of Respondent No. 2, the detailed design of diverted canal was prepared by CDO MERI Nashik keeping into consideration all probable ill impacts arising out of diversion of river. The agency is the



meantime, consent of local Gram panchayats regarding there is no loss of crop due to diversion of Koradi Nallah has been obtained (Letter from Gram Panchayat, Naglone Dated 31/12/2016 and Gram Panchayat Vislone (Palasgaon) Dated 26/03/2017). It is submitted that the formal permission from Irrigation department Chief Engineer, CIPD Nagpur could not reach before the act. However, the regional officer CIPD Chandrapur recommended the diversion proposal to Chief Engineer Water Resource Department Nagpur vide letter dated 21.06.2016.

20. That the Asstt. Superintendent Engineer, Irrigation department vide letter no. 1740 dated 03/04/2017 stated that there is no need of NOC from Irrigation Department as diversion of Nala is already completed. Further, no such environmental damage was observed by any statutory authorities at the place of diversion. Also, as observed during the site inspection by MPCB (responsible for monitoring the conditions prescribed in EC and CTO), the backwater was also neither observed at the farm nor at the

nalla may lead to the risk of flood in the downstream region of the diversion point. The flood may cause severe impact on the bridge on Wani Warora Road, which in turn have caused a calamity in the region. Thereafter, Tahsildar - Bhadrawati directed W.C.L. Majri Area to complete the diversion of Koradi Nallah up to 31/05/2016 at any cost failing which W.C.L., Majri Area will be answerable to the consequences that may arise due to coming monsoon if diversion of Nallah is not completed. That the tahsildar directed immediate diversion of nalla in view of apprehending the danger of water accumulation on Wani Warora highway and nearby Naglone village. Thus, in good will and in public interest, the diversion was carried out as per scientifically assessed design of CDO Nashik and after the directions of Tahsildar. The land on which diverted canal was constructed was legally titled in the name of W.C.L. under Coal Bearing Area Act. The land primarily comprises of Agricultural land only. Also plantation was also done by WCL in 200 m wide stretch between the diverted nalla and the complainant's field. In the



Environmental Laws...". That itself proves the fact that the present case does not pose instances for levying Environmental Compensation as per the methodology established by CPCB.

23. It is submitted that the committee failed to appraise the letter no 3134/admin.-1/WCL/Koradi nala / 2017 dated 21/06/2016 issued by Assistant Superintendent Engineer Chandrapur Irrigation Project Division (CIPD) to Chief Engineer Water Resource Department Nagpur stating that as the diversion is of permanent nature, it is recommended to approve the diversion proposal of Koradi nala with a width of 49 meters and Shirna Nala with a width of 49 meter.

24. In light of the aforesaid facts and circumstances, the Respondent No.3 most humbly states, that the Applicant has miserably failed to point out any patent illegality committed by the Respondent No. or any other authority. The Respondent No.3 therefore state, that the instant Original Application deserves to be dismissed forthwith.

confluence point of Shirna and Koradi river. Further, the committee report itself negates the fact of Environmental Damage and flooding due to diversion of nalla.

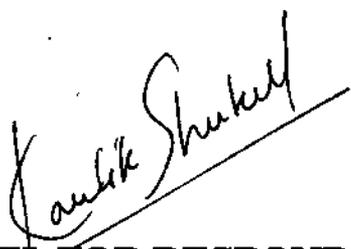
21. Thus, the act of diversion was carried out following all statutes and due to urgency with regard to Public Health and Coal production, W.C.L. was bound to carry out diversion prior to issuance of formal letter of NOC from Chief Engineer, Water Resource Department Nagpur. Considering the fact that, the office of Assistant Superintendent Engineer, CIPD Chandrapur recommended the proposal of diversion and as recorded by various regulatory authorities, no damage to environment is caused by the nalla diversion. In view of the above, it is submitted that "issuance of a formal letter" may not form a basis for coming to the conclusion that it is violating Environmental norms.

22. Also, the committee further states and quotes "...Though such listed instance may not be directly applicable in the current matter for arriving at the damages amount for contravening mandatory provisions of

Hence, this reply.

NAGPUR

DATE: 27/10/23

  
COUNSEL FOR RESPONDENT

NO.3

**SOLEMN AFFIRMATION**

I ELYAS HUSEN SHEIKH, WORKING AS  
AREA GENERAL MANAGER, MAJRI AREA  
RESIDENT OF KUCHANA, TALUKA BHADRAVATI

authorized to swear the present affidavit do hereby take  
oath and state on solemn affirmation that

That the present reply has been drafted by my  
counsel as per my instructions and after having perused the  
same, I say that the contents of the paragraph Nos. 1 to  
22 are true and correct to the best of my personal  
knowledge, belief and information received.

Hence, verified and signed at Nagpur on this 27<sup>th</sup>  
day of ~~August~~ <sup>Oct</sup>, 2023.

**I KNOW & IDENTIFY THE DEPONENT.**

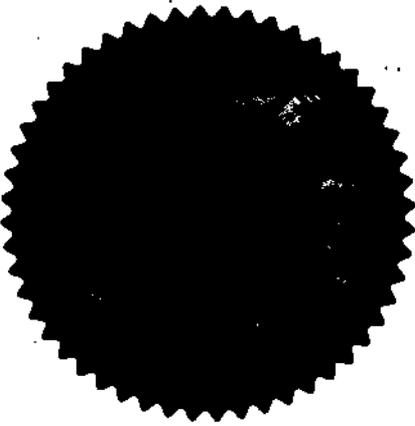
**NOTARIAL REGISTER**  
ENTRY NO. 1182/23  
DATE 27-10-2023

*[Signature]*

**ADVOCATE**

*[Signature]*  
27/10/23  
**DEPONENT**

क्षेत्रीय महाप्रबंधक  
Area General Manager  
माजरी क्षेत्र / Majri Area



sworn before me on this 27<sup>th</sup> day of Oct  
2023 by shri. Eyad Muresh Sheikh  
do. A.G.M. M.A. KICH KACHAUA  
Who is present / who has  
been identified to me  
whose photo is attached hereto.

*[Signature]*  
**M.R. SHEIKH** 27/10/23  
NOTARY, BHADRAWAT,  
DIST-CHANDRAPUR (M.S.)

