

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, PUNE,
AT PUNE

ORIGINAL APPLICATION NO.8 OF 2018

Prakash Virsing Adhe and another

APPLICANTS

v/s

Kashmira Stone Crusher
and others

RESPONDENTS

WRITTEN SUBMISSION FOR AND

ON BEHALF OF RESPONDENT NOS.1,2,3

MAY IT PLEASE THE HON'BLE TRIBUNAL:

1. The Applicant has filed the present application alleging that, there has been air pollution on account of operation of the crusher of Respondent Nos.1 and 3. The said application is submitted before this Hon'ble Tribunal on the pretext that there has been increase in air pollution and that the Applicants have faced various difficulties, such as loss of crop etc.
2. The Hon'ble Tribunal must also note that the conduct of the Applicant No.2. The Applicant No.2 has not adhered to any timelines set by this Hon'ble Tribunal. The Applicant No.2 has not approached this Hon'ble Tribunal with clean hands and has suppressed certain material facts. The dishonest litigant must not be entertained by this

Hon'ble Tribunal.

3. The moot question before the Hon'ble Tribunal can be now narrowed down on account of subsequent developments. The Respondent Nos.8 and 9 have issued a letter dated 25.07.2020 to the Respondent No.1 and has computed the environmental compensation amounting to Rs. 9,37,500/-. The said environmental compensation has been challenged by the present Respondent Nos.1 by filing a detailed reply dated 29th July 2020 (page No.288).
4. The Respondents state that, while considering the number of violation days as 150, which is incorrect, because the Respondent No.1 herein received the proposed directions on 30.07.2018 and the Respondent No.8 pointed out certain non-compliances on the part of Respondent No.1. The Respondent No.1 vide its reply dated 13.08.2018 had reported the compliance and the same has been accepted by the Respondent No.8. Assuming that there was non-compliance on the part of Respondent No.1, so the non-compliances were complied within 13 days after receipt of the letter of the Respondent No. 8. The Respondent No.8 did not pay any heed to the reply submitted by the Respondent No.1 and caused a visit only on 30.11.2018. The Respondent No.1 cannot be faulted for the delayed visit of the Respondent No.8 as the Respondent No.1 had duly notified

the compliance on 13.08.2018. The Affidavit in reply dated 10.10.2018 (**page No.199**) filed by the Respondent No.8 also states that the lab reports also demonstrates that there is no violation of consent conditions.

5. The Respondent No.8 vide its further detailed affidavit dated 27th February 2019 has stated that all compliances are in place and it has also annexed the letters of District Health Officer and District Animal Husbandry officer (**Page No.249**) wherein it is stated that there is no harm to the crop or health of any resident living nearby. Thus, the case of the Applicant is frivolous and thus not maintainable. It can be clearly seen from the said averments that the present case is filed only for harassment and by way of threatening.
6. The Respondent no.1 states that, the Respondent No.8 has alleged that the Respondent No.1 has engaged into the violations under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. The said Acts are bound by certain procedure. It is stated that, whenever a direction is to be issued to any of the project proponent, the project proponent should be given a time of 15 days to respond to the said allegations contained in the letter according to rule 34 of the Water Act. The project proponent should be offered an opportunity of

hearing and then the detailed order, a speaking order by justifying the claims in notice should be served upon the project proponent.

7. In the present case, the Respondent No. 8 has by virtue of the direction of the Hon'ble Tribunal vide order dated 29.07.2020 has imposed the environmental compensation upon the Respondent no.1. Be that as it may, the order of this Hon'ble Tribunal dated 29.07.2020 states that the Respondent No.8 may impose environmental compensation upon the Respondent no. 1. The wording in the order is very clear that, it states "may" and not "shall". The Respondent no.8 has incorrectly read the order and has gone ahead and imposed the environmental compensation upon the Respondent No. 1.
8. It is hereby submitted that, the Applicant has thus thereafter filed a rejoinder dated 27.09.2020, wherein the Applicant has now produced certain documents on record and that it has filed its written submissions before this Hon'ble Tribunal on 06.10.2020. Vide the said written submissions and the Rejoinder Affidavit, the Applicant is now trying to improve his case and trying to demonstrate before this Hon'ble Tribunal that, the Respondent No.1 had faced the environmental damages for his farm and health. Be that as it may, the said allegations are totally devoid of any merit and have been just filed for the sake of harassing Respondent No.1 and threatening and

blackmailing the Respondent No.1.

9. It is hereby submitted that, the Applicant No. 1 herein had filed an affidavit, withdrawing the original application. Now, the Applicant No.2 suddenly has appeared before this Hon'ble Tribunal and is contesting the present application. It is a trite law that the litigants sailing in the same boat cannot substantiate their cases differently. The Applicant has thus gone on to say that, the Respondent No.1 has engaged into the environmental pollution which is incorrect and devoid of any merit and thus this application needs to be dismissed.
10. The Applicant No.2 is claiming certain compensation on the ground of damage to his farm and health. It is hereby submitted that, S. 15 of the National Green Tribunal Act clearly stipulates that, the application for compensation can be filed under S.15 of the Act. The S.15 of the Act has to be read in conjunction with Rule 8 of the National Green Tribunal Practice and Procedure Rules, 2011 wherein it is stated that, the Applicant who has filed the application for compensation shall file a separate application in the form of Form-2, wherein, all material particulars pertaining to the damage shall be mentioned in the said application. The Rule 12 of the said rules also contemplates that, the Applicant who is filing an application for compensation shall pay 1% of the Stamp Duty before this Hon'ble

Tribunal before seeking any compensation. In the present case, the Applicant has not done the same and hence the said claim cannot be entertained by this Hon'ble Tribunal.

11. The Respondent No.1 is thus praying before this Hon'ble Tribunal that, the notice which has been issued to the Respondent no.1 seeking environmental compensation shall be kept in abeyance. The Respondent No.8 shall be directed to give an opportunity of hearing and following the due procedure as contemplated under the Water and the Air Act, and then any order which is required to be passed in accordance with the Law shall be passed.
12. It is thus submitted that, the present application shall be disposed off, as nothing survives in the present application with cost, as the Applicant has indulged into harassment of the Respondent Nos.1, 2 and 3.

DATE: 09/10/2020

PLACE: PUNE



ADVOCATE FOR RESPONDENT No.1