BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 15 OF 2020 (WZ)

IN THE MATTER OF:

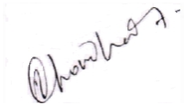
KRISHNA MARATHE ....APPLICANT

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

INDEX

THROUGH



RAHUL CHOUDHARY **KAUSTAV DHAR**

ADVOCATES

COUNSELS FOR THE APPLICANT

N-73, LGF, Greater Kailash – 1,

New Delhi – 110048

Mobile: +91 9312407881

Email: litigation@dclawchambers.com

PLACE: PUNE/NEW DELHI

DATE: 04.06.2026

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 15 OF 2020 (WZ)

IN THE MATTER OF:

KRISHNA MARATHE ….APPLICANT

VERSUS

UNION OF INDIA & ORS. …RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the present Application was filed against the Respondent No. 6 M/s New India Mining Corporation Pvt. Ltd. (NIMCO) for carrying out mining operation in mining lease area of 32.83 Ha in Redi Village, Vengurla Taluka, Sindhudurg District, Maharashtra. The mining lease was executed on 29.10.2002 for a period of 20 years and the lease is valid up to 22.04.2020. The Respondent No. 6 has produced mining lease dated 29.10.2002 which is at **page 301 of the paper-book**. The project proponent was operating the mine without obtaining any Environment Clearance.

2. The Hon'ble Tribunal issued notice on 10.07.2020 in the matter and constituted a committee for submitting a report in the matter. The Joint Committee submitted its report on the basis of site visit on 28th and 21st of October 2020. [**Joint Committee Report at page 72**]. The committee records in Report at Serial No. 1 that Respondent No. 6 carried out mining operation without obtaining Environment Clearance. This Hon'ble Tribunal vide order dated 25.08.2022 impleaded SEIAA as Respondent No. 7 who has filed their reply dated 13.02.2023. [**at page 382**] The SEIAA in their reply has categorically stated that the project proponent was required to obtain Environment Clearance which is failed to do so. The relevant part of the reply is reproduced herein below for reference:

"6. It seems that NIMCO has started mining operations in the year 1952. After the EIA Notification 1994, came to be notified, NIMCO should have applied for prior Environment Clearance, it seems, which they have not. They haven't even applied for Environment Clearance after EIA Notification, 2006 got notified. This is serious violation of EIA Notifications, 1994 and 2006.

7. SEIAA never received any application from NIMCO for grant of Environment Clearance nor has any Environment Clearance been granted to NIMCO by SEIAA."

3. That the Respondent No. 1 the MoEF&CC has submitted an affidavit dated 14.09.2023 wherein they have stated that Respondent No. 6 is required to obtain Environment Clearance [**at page 457 of the paperbook**]. The relevant part of the reply is reproduced herein below for reference:

"4. It is submitted that the Environmental Clearance for the Respondent No. 6, New India Mining Corporation Pvt. Ltd. (NIMCO) at Redi Village, Vengurla Taluka, District Sindhudurga is required as per the Environmental Impact Assessment Notification, 2006 dated 14th September, 2006 and its subsequent amendments."

4. The Applicant herein submits that the project proponent, Respondent No. 6 vide Reply Affidavit dated 08.07.2022 in Para 19 has denied the requirement of obtainment of Environmental Clearance and has stated that under EIA Notification, 2006, EC is only mandated for new projects or in case of any expansion and modernization of existing project. That further in Para 22 Reply Affidavit dated 08.07.2022, Respondent No. 6 states that when the lease was renewed in 2001, no direction was issued by the Government to obtain Environmental Clearance. **(Page No. 211 of the Paper-book).**

5. That the Applicant herein in this regards submits that the mining lease was renewed in the year 2001 as contended by the Respondent No. 6 in para 22 of the reply dated 08.07.2022. It is thus pertinent to note that since by the time mining lease was renewed in 2001, the 1994 EIA Notification existed that required mining activities to obtain prior Environmental Clearance. As per EIA Notification 1994, Para 1 states that:

"And whereas all objections received have been duly considered; Now, therefore, in exercise of the powers conferred by sub-section (1) and clause

(v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby directs that on and from the date of publication of this notification in the Official Gazette, ***expansion or modernization of any activity*** *(if pollution load is to exceed the existing one, or new project listed in Schedule I to this notification,* ***shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification."***

6. The Hon'ble Supreme Court in ***Common Cause v. Union of India (2017) 9 SCC 499,*** [**relevant part of the judgment is at page 279**] the Apex Court clarified the misunderstanding, confusion or ambiguity regarding mining without an EC or FC or both:

> "***188. To avoid any misunderstanding, confusion or ambiguity, we make the following very clear:***
>
> ***(2) The renewal of a mining lease after 27-01-1994 will require an EC even if there is no expansion or modernization activity or any increase in the pollution load.***
>
> *(5) Any iron ore or manganese ore extracted contrary to EIA 1994 or EIA 2006 would constitute illegal or unlawful mining (as understood and interpreted by us) and compensation of 100% of the price of the mineral should be recovered from 2000-2001 onwards in terms of Section 2(5) of the MMDR Act, if the extracted mineral has been disposed of. In addition, any rent, royalty or tax for the period that such mining activity was carried out outside the mining lease area should be recovered.*
>
> *(6) With effect from 14-09-2006 all mining projects having a lease area of 5 ha or more are required to have an EC. The extraction of any mineral in such a case without an EC would amount to illegal or unlawful mining attracting the provisions of Section 21 (5) of MMDR Act."*

7. It is pertinent to note that prior to this, the Hon'ble Supreme Court in **M.C. Mehta v. Union of India (2004) 12 SCC 118,** [**relevant part of the judgment is at page 283**] has held that:

> *"77. We are unable to accept the contention that the notification dated 27th January, 1994 would not apply to leases which come up for consideration for renewal after issue of the notification.* ***The notification mandates that the mining operation shall not be undertaken in any part of India unless Environment Clearance by the Central Government has been accorded.*** *The clearance under the notification is valid for a period of five years. In none of the leases the requirement of notification was complied with either at the stage of initial grant of the mining lease or*

at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. ***No mining operation can commence without obtaining environmental impact assessment in terms of the notification****."*

(Emphasis supplied)

8. Furthermore, the Respondent No.6 in para 22 of the reply affidavit have tried to shift the blame on the government for not issuing direction to obtain the environmental clearance or its application for renewal. That the Applicant hereby submits the said contention is against the Hon'ble Tribunal's order in **Tami Nadu Small Mine Owners Federation v. Secretary, MoEF & Ors reported in 2020 SCC NGT 162,** wherein it was held that: **[Page No. 289 of paper-book]**

> *"77. (iv) it is also made clear that all mining leases****, either major or minor, even less than 5 ha area, has to apply and get Environment Clearance as per the amended EIA notification dated 15.01.2016. This will apply to the existing mining leases as well. Without obtaining necessary environment clearance irrespective of area, no mining both minor/ major, shall be permitted to operate"***
>
> *(Emphasis supplied)*

9. Therefore as per the clarification issued by the Hon'ble Supreme Court in **Common Cause case** as well as in **M.C. Mehta case**, the Respondent No. 6 was ought to obtain the Environmental Clearance which they failed to obtain and was carrying out mining activities illegally causing severe environmental damage thereby required to immediately compensate and restored the ecosystem.

10. That another contention raised by Respondent No. 6 is that there is a delay and the application is barred by limitation. This contention is suitably responded in Rejoinder dated 23.08.2022 [**at page 251**] filed by the Applicant. The Applicant has relied on para 32 of **Forward Foundation v. State of Karnataka 2015 SCC OnLine NGT-5** wherein this Hon'ble Tribunal has clarified the scope of 'recurring cause of action'. The Hon'ble Tribunal has stated:

> *"In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation."*

It is submitted that in the present case, there is continuous violation by Respondent No. 6 of undertaking mining activity without Environment Clearance. Furthermore, the application was also filed under Section 15 of the National Green Tribunal Act, 2010 for restoration of the area because of the damage caused by the Respondent No. 6. As per Section 15 of the National Green Tribunal Act, 2010, an application for restoration, compensation and damage can be filed within 5 years. As per Section 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.*** Therefore, reading together the Section 15 of the NGT Act and the decision of this Hon'ble Tribunal in ***Forward Foundation v. State of Karnataka 2015 ALL (1) NGT reporter (2) (Delhi) 81*** the above titled application is well within the limitation period prescribed as per Section 15 of NGT Act, 2010 as well.

11. The project proponent though not stated in the pleadings but during course of the hearing made submission that Section 15 of the National Green Tribunal Act, 2010 provides only five years period of limitation. Therefore, if any mineral has been mined five years prior to filing of this application, no realization on that count can be made for the quantity of mined material which has been extracted. In this regard, the Applicant has filed detailed submission dated 19.04.2023 [**at page 387**]. The main submission of the Applicant is as follows:

    (i) The submission made by the Respondent No. 6 is without any regard to the applicability of Section 15(3) which provides for limitation to file application but nowhere in the NGT Act, 2010 prescribed any limit for which environmental compensation can be imposed/realized. The Hon'ble Tribunal in ***Forward Foundation*** case also has held that petition under Section 15 of the NGT Act can be filed within five years.

    (ii) That the imposition of Environment Compensation has to be as per the formula derived by the CPCB in Hon'ble Supreme Court's order in

Paryavaran Suraksha Samiti v. Union of India, 2019 SCC OnLine NGT 2834. It is submitted that nowhere in the formula developed by CPCB mention any limitation in terms of period of calculation of environment compensation.

(iii) The Hon'ble Tribunal in many cases considered the past violations beyond the period of five years and held violators liable to pay environment compensation.

Directions Passed by this Hon'ble Tribunal against Retrospective Condonation of Environmental Violations:

12. It is submitted that this Hon'ble Tribunal in plethora of judgments has mandated that past environmental violations be strictly factored while calculating the environmental compensation. That in catena of cases it has been held that environmental violations should not be retrospectively condoned or legitimized, especially when industries have operated in breach of statutory environmental safeguards:

i. That the CPCB issued a Guideline pertaining the formula/methodology for assessing Environmental Compensation as per the directions issued by this Hon'ble Tribunal in **Parayavaran Suraksha Samiti & Anr v. Union of India & Ors., O.A No. 593 of 2017** wherein the methodology used by CPCB does not restrict to the 5 years limitation period for imposing environmental compensation on violators. The formula derived for the calculation of the environmental compensation is as follows:

$$EC = PI \times R \times N \times S \times LF$$

Where,
EC is Environmental Compensation in ₹
PI = Pollution Index of industrial sector
N = Number of days of violation took place
R = A factor in Rupees (₹) for EC
S = Factor for scale of operation
LF = Location factor

It is pertinent to note here that the 'N' here denotes the "Number of days of violation took place" and that the formula/ methodology nowhere denotes that the number of days of violation took place cannot exceed beyond 5 years of past violation. Therefore, it can also be levied in cases where violation has exceeded for more than five years.

ii. That this Hon'ble Tribunal in the matter titled **Sudhansu Sekhar Kunar vs. State of Odisha O.A. 11 of 2019 (EZ)** wherein the allegation raised was against the illegal mining in more than 29.90 acres of forest land in Odisha wherein the Tehsildar has assessed that around 3769.16 m^3 of forest land has been destroyed by cutting down trees. It is pertinent to note that the environment compensation assessed by committee by applying the CPCB formula for the illegal mining activities was Rs 30,00,000/-. That the committee report recorded the number of days' violations took place without obtaining EC and CTE as 7300days i.e., 20 years. Therefore, it is clear that that while calculating the environment damage of the violations, the number of day's violations has to be considered even beyond five years.

> *"4. a. The mining activities are coming under Red Category of Industries as specified in Sl. No. 35 as per the SPCB, Odisha Notification No. 8333 dated 11.07.2018. Therefore, for above cases PI is enclosed as 80.*
> ***b. The Number of days of violation as reported by Joint Inspection report on 29.04.2019 by District Collector, Keonjhar and DFO, Keonjhar Wildlife Division, Anandpur in the matter of O.A. No. 11/2019(EZ) i.e. 20 years or 20×365=7300 days (Reported enclosed as Annexure-4). No information about the number of working days/year has been provided, so 365 days has been considered for calculation.***
> *c. A factor in Rupees for EC has been assumed as Rs. 250/- for cases of violation.*
> *d. Factor of scale of operation has been considered as 0.5 (Small) assuming excavation of the top soil and mining of laterite. The average depth of quarries is 5-20 ft depth.*
> *e.Local Factor has been assumed as I (for city/town having population less than one million)".*

iii. That this Hon'ble Tribunal in the matter tiled **Tahir Hussain vs. State of Rajasthan & Ors. Appeal No. 02 of 2024 (CZ)** whereby a notification

issued by Rajasthan Pollution Control Board was under challenge which states that no Environmental Compensation would be levied for the 'Back Period' for which Consent to operate has been regularised. That this Hon'ble Tribunal vide order dated 15.01.2025 has held that a factory or industrial unit cannot legally operate without obtaining the required environmental permissions, such as Consent to Operate (CTO) under the Air Act, 1981 and the Water Act, 1974. If a unit runs without these permissions, its operation is illegal from the very beginning. The authorities cannot later "regularize" or legalize that illegal period merely by collecting some backdated fees or penalties. Doing so would allow industries to violate environmental laws without facing proper consequences or accountability for pollution caused during that time. That the Hon'ble Tribunal recorded the observation passed by the Joint Committee in its Report which is as follows: The relevant extracts are hereby reproduced:

> ***"If an industry is operating without obtaining statutory permissions, regularizing the past period for such defaulter units by charging back-period fees violates the provisions under the Water (prevention & Control of Pollution) Act, 1974 and the Air (prevention & Control of Pollution) Act, 1981****.*
> ***Hon'ble courts in several past inter-alia matters have emphasized that no retrospective regularization shall be considered as these actions violate environmental laws and should not be regularized without accountability.*** *Both the Hon'ble Supreme Court and NGT have consistently held that industries cannot be granted retrospective clearances or consents under the Water Act, the Air Act, or the Environment (Protection) Act. Prior consent is mandatory.* ***In view of above, it is submitted that regularization of any industry from back period is a violation of environmental laws.***

That in this regard, the Hon'ble Tribunal recording the findings and observations of the Joint Committee has held that the Notification passed by the Rajasthan Pollution Control Board needs to be modified:

> ***"25. It is further in violation of guideline issued by the CPCB, methodology for imposing environmental compensation and in violation of Writ Petition (Civil) No. 375/2012, Paryavaran Suraksha Samiti case referred above. The operation of any unit without statutory***

permission and regularizing the past period is in violation of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and regularizing defaulter units which are operating without a valid consent CTO by imposing back period fees, permits these units to operate without any accountability for any environmental norms and it is called unauthorized and illegal operation. The principle is that no retrospective regularization shall be considered as these actions violate environmental laws and should not be regularized without accountability.

26. In view of the above discussion, we are of the view that the order passed by the State Pollution Control Board under challenge is beyond the jurisdiction of the State PCB and against the provision of law and settled principle laid down by Hon'ble Supreme Court with regard to principle of polluters to pay and public trust doctrine. ***The order passed by the State Pollution Control Board, Rajasthan, dated 02.01.2024 is not in consonance with the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and in contravention of the order of Hon'ble Supreme Court of India in Vellore Citizen Welfare Forum case and against the CPC guidelines. Accordingly, appeal deserves to be allowed, and accordingly allowed and the order dated 02.01.2024 passed by the Respondent No. 3, deserves to be modified and corrected according to the settled provisions of law and guidelines issued by the CPCB."***

iv. That this Hon'ble Tribunal in another matter tiled **M/s Shiv Industries vs. Chandigarh Pollution Control Committee Appeal No. 30 of 2023 (PB)** whereby an order issued by the Chandigarh Pollution Control Board issued u/s 5 of the Environment (Protection) Act, 1986 was challenged whereby this Hon'ble Tribunal vide order dated 07.12.2023 has held that recovery of compensation on polluter pays principle is an enforcement strategy and not a substitute for compliance and hence while calculating the environmental compensation, past violation shall not be condoned:

"110. In respect of solid waste, sewage effluent, ground water extraction etc., Tribunal in OA No. 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others, vide order dated 28.08.2019 has said in para 16, that as regards environmental compensation regime fixed vide CPCB guidelines for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. ***Tribunal further observed that recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance.***

It directed all States/UTs to enforce compensation regime latest w.e.f. 01.04.2020 and made it clear that it is not condoning any past violations. *Tribunal directed to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies failing which the concerned States/UTs themselves must pay the requisite amount of compensation"*

v. That this Hon'ble Tribunal in the matter tiled **Santoshpur Mitali Sangha vs. State of West Bengal and Ors. O.A. No. 82 of 2023 (EZ)** dealt with the issue whereby a Gaushala has been operating since 2012 in complete violation of siting criteria and without obtaining any requisite Consent and has dumped humongous amount of bovine waste into the adjacent agricultural land. That the unit has obtained a CTO from the West Bengal Pollution Control Board only after filing of the Application before this Tribunal in 2023. That this Hon'ble Tribunal vide order dated 12.08.2024 has held that past violation shall be taken into account while computing the environmental compensation:

"68. On a conspectus of facts and documents on record and the Guidelines laid down by the Central Pollution Control Board towards Environmental Management of Dairy Farms and Gaushalas, 2021, we are satisfied that the Respondents, ***Project Proponent, are in clear violation of the Guidelines, 2021, as well as of the prescribed environmental norms, such as, inter-alia, operating without a valid Consent to Operate which was applied for only after filing of the Original Application and obtained on 21.09.2023; extracting ground water without requisite permission; violating Siting Criteria, among others, and are, therefore, liable for payment of Environmental Compensation for present and past violations.***

69. We accordingly dispose of this Original Application as well as Execution Application with a direction to the West Bengal Pollution Control Board, Respondent No.2, to compute Environmental Compensation against the Respondents, Project Proponent, strictly as per law by issuing the Project Proponent a show cause notice and giving an opportunity of showing cause and filing reply to the same. Let this exercise be carried out within a period of two months".

vi. That this Hon'ble Tribunal in the matter titled **Indian Council for Enviro-Legal Action vs. Jammu and Kashmir State Pollution Control Board, O.A. No. 483 of 2016** dealt with the issue pertaining to some

industries operating illegally without any required consents and was causing pollution, discharging effluents/waste into or near the River Basantar. That this Hon'ble Tribunal directed the SIDCO and Municipal Council Samba, to pay compensation for the discharge of industrial waste into the river for more than a decade considering the past violations. It states as follows:

> *"16. Accordingly, we direct as follows:*
> *i. The SIDCO must set up TSDF and CETP within six months, failing which SIDCO will be liable to pay an amount of Rs. 5 Crores every three months by way of deposit with the Central Pollution Control Board for being spent on restoration of environment.* ***For the past failure in more than one decade, SIDCO is held liable to pay compensation of Rs. 5 Crores*** *which may be deposited within one month from today with the Central Pollution Control Board for restoration of the environment.*
> ***ii. Municipal Council, Samba is held liable to pay compensation of Rs. 10 Lakh for the past failure in installing STP and for discharging untreated sewage in the river****. Same amount will be payable for failure to install STP after six months, i.e., at the rate of Rs. 10 Lakh per month."*

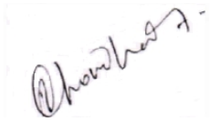
vii. That the Hon'ble Supreme Court in the matter titled **Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647** has held that industries are liable to compensate for past pollution generated by them:

> *6. This Court on 8-9-1995 passed the following order:*
> *"The Tamil Nadu Pollution Control Board has filed its report. List No. I relates to about 299 industries. It is stated by Mr G. Ramaswamy, Mr Kapil Sibal and Mr G.L. Sanghi, the learned Senior Advocates appearing for these industries, that the setting up of the projects is in progress. According to the learned counsel Tamil Nadu Leather Development Corporation (TALCO) is in charge of the project. The learned counsel state that the project shall be completed in every respect within 3 months from today. The details of these industries and the projects undertaken by TALCO as per List No. I are as under. … We are of the view that it would be in the interest of justice to give a little more time to these industries to complete the project. Although the industries have asked for three months' time, we give them time till 31-12-1995****. We make it clear that in case the projects are not completed by that time, the industries shall be liable to be closed forthwith. Apart from that, these industries shall also be liable to pollution fine for the past period during which they had been operating.***
> *25. Keeping in view the scenario discussed by us in this judgment, we order and direct as under:*
> ***5. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the***

environmental degradation and suffering to the residents of the area".

That therefore, it is humbly submitted by the Applicant that this Hon'ble Tribunal may be pleased to impose penalty upon Responded No.6 for the illegal mining operations carried out after 2002, where mining leases were renewed and mining started without obtaining Environment clearance and thereby causing severe environmental damage to the surroundings. The respondent no.6 may be kindly directed to restore, reclaim the illegally mined lands.

THROUGH



RAHUL CHOUDHARY **KAUSTAV DHAR**
ADVOCATES
COUNSELS FOR THE APPLICANT
N-73, LGF, Greater Kailash – 1,
New Delhi – 110048
Mobile: +91 9312407881
Email: litigation@dclawchambers.com

PLACE: PUNE/NEW DELHI

DATE: 04.06.2026

Gmail

Litigation . <litigation@dclawchambers.com>

Written Submission on behalf of the Applicant in O A No. 15 of 2020 Krishna Marathe Versus. Union of India and ors.

1 message

Litigation . <litigation@dclawchambers.com> Thu, Jun 4, 2026 at 3:58 PM
To: Deepak Gupte <advgupte@gmail.com>, Manasi Joshi <adv.manasi.joshi@outlook.com>, Aniruddha Kulkarni <aniruddha1488@gmail.com>, "advparagsrao@gmail.com" <advparagsrao@gmail.com>

Dear Sir/madam,

Please find attached- Written Submission on behalf of the Applicant in O A No. 15 of 2020 Krishna Marathe Versus. Union of India and ors.

Thanks & Regards
Omprakash

Written Submission on behalf of the Applicant.pdf
439K