

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

ORIGINAL APPLICATION NO 17 OF 2020

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

IN THE MATTER OF:-

KRISHNA MARATHE & ORS.

...APPLICANTS

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

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THROUGH



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**WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANTS ON THE
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MOST RESPECTFULLY SHOWETH:

1. The present Original Application has been filed under Section 14 and 15 read with Section 20 of the NGT Act, 2010 highlighting issue of non-compliance of conditions of Environmental Clearance dated 22.04.2010 granted to the Respondent No.6 for Iron ore mining. The non-compliance of the EC conditions is resulting in contamination of the groundwater in the villages of Redi and Kanyal, Vengurla taluka, Sindhudurg district of Maharashtra. The Applicant has raised the concern of pollution caused to the ground water of the area because of the act of Respondent No. 6 and it is prayed inter-alia, that Respondent No.6 is liable for restoration and compensation.
2. According to the Respondent No. 3, Maharashtra Coastal Zone Management Authority, with respect to CRZ issue, a Committee had conducted a site visit and it was informed that dumping of the mine waste started in the year 1974 along the coast and stopped before 1990. There was no ongoing dumping observed on the said old dump sites, during the site visit. The Committee also noted that mining activities are carried out in one pit only, namely pit no. 203. The second

pit (Mauli pit over 3.4 hectares) falls in the CRZ area and is located at around 1 kilometre from the ongoing mining operation. The said Mauli Pit was closed in 1990 and currently it is a water reservoir which is used by villagers for irrigation. The pit was stabilized with dense plantation in and around the periphery of the pit according to the Affidavit of Respondent No.3.

3. It is stated that based on the above averments of the Respondent No. 3 and 6, the Hon'ble Tribunal vide its Order dated 01.12.2021 was pleased to treat the issue of limitation/ delay and laches as a preliminary issue.
4. The Applicant submits that the following facts/issues mentioned in the Original Application shows that the issue with respect to pollution caused by the iron ore mining and non compliance of clearance condition is within limitation being a continuing cause of action:-
 - i. That at the outset it is submitted that the present Application is filed raising non compliance of condition No. i, vi. Vii, viii, xii, xiv of the Environment Clearance dated 22.04.2010 which was granted for mining of iron ore by Respondent No. 6. It is therefore submitted that statement that dumping stated in 1974 and mine was closed in 1990 is immaterial.
 - ii. That there are several documents and reports annexed with the Application, which show that the Respondent No. 6 was disposing the mining waste in violation of environment condition. The letter dated 15.01.2019 by Dy. Controller of Mines to Respondent No. 6 which is annexed as Annexure A-3 clearly records that dumping is not done at the site. Further Annexure 4 of the Application also shows that dumping was happening outside the mining lease area. The Applicant has also filed photographs of the location as Annexure A-18 and A-24 which show the pollution caused by the Respondent No. 6 at present.

- iii. That there are report by the District Public Health Laboratory dated 04.05.2018 which analysed the tap water in Redi village, notes that the sample contains chlorides, total hardness and TDS above desirable limits. (**ANNEXURE A-14A**). Similar results were analysed by another report dated 06.06.2018. (**ANNEXURE A- 14B**)
- iv. On 26.05.2018, half yearly compliance report submitted by M/S Gogate Minerals for the period October 2017 to March 2018 shows that they have admitted to non-adherence of specific condition regarding simultaneous operation of two pits. (**ANNEXURE A-6**)
- v. Letter dated 31.05.2018 written by Dy. Controller of Mines to M/S Gogate Minerals bringing to their notice various violations of provisions of Mineral Conservation and Development Rules, 2017 in respect of iron ore mine operated by them. (**ANNEXURE A-11**)
- vi. On 31.05.2018, a resolution was passed by the village panchayat at Redi which held that the mining companies are causing direct harm and pollution to the local groundwater system and available drinking water to the residents of village Redi. (**ANNEXURE A-16**)
- vii. Report dated 18.07.2018 of District Public Health Laboratory on chemical examination of water for drinking purposes stated that the water samples are hazy with brownish particles having turbidity more than its permissible limits of 5.0 NTO and also contains chlorides. The TDS was also found more than the desirable limits.
- viii. On 02.04.2019, a mining lease is executed in favour of M/S Gogate Minerals to continue mining over lands bearing Sy No.

51,52,57,58,60,34,26,28,29,33,50,24,32,59,9,48,47,46,53, of the Redi village till 11.01.2056.

- ix. On 03.06.2019, a Report of Directorate of Health Services, Environmental and Pollution Wing, Goa found that well water from village Kanyal (Redi) situated in property bearing sy No. 47 does not confirm to the standards prescribed for drinking water and the water therefore cannot be used for human consumption. (**ANNEXURE A-9**)
 - x. On 10.06.2019, a letter was written by Village Panchayat, Redi to the Collector, Sindhudurg, stating that the mining activities being done at Redi village by Respondent No. 6 is direct and unmistakable cause of water pollution of nearby wells in the village being rendered not potable. (**ANNEXURE A-15**)
 - xi. On 02.12.2019, a representation was sent by the Applicants to the MoEF&CC, MPCB, MCZMA, Directorate of Geology and Mining, Government of Maharashtra.
 - xii. Various photographs were filed by the Applicants of mining pits showing Non-Compliance of EC conditions.
 - xiii. In 11.03.2020, the present Original Application was filed.
 - xiv. After the filing of the OA, the Applicants have filed various other analysis reports, Google Earth and photographic images displaying non-compliance and correspondence between Mamlatdar of Taluka Vengurla and District Mining Officer, Sindhudurg.
5. It is ,therefore, stated that the above documents on record of the Hon'ble Tribunal shows that the cause of action is not of 1974 or 1990 as alleged but recent one and within the limitation of Section 14 and 15 of the National Green Tribunal Act, 2010.
6. It is stated that Respondent No. 6 is continuously polluting the groundwater in the villages of Redi and Kanyal, Vengurla Taluka,

Sindhudurg district of Maharashtra and the pollution is continuing unabated till today. The Applicants have mentioned in the limitation clause that the Original Application is filed under Section 14 and 15 of the NGT Act, 2010. Conditions of EC dated 22.04.2010 have not been enforced till date and everyday the EC conditions are not complied with, a fresh cause of action is created and the same constitutes a continuing cause of action. Hence, according to the Applicants, an Original Application under Section 14 and 15 of the NGT Act was maintainable.

7. Direct and specific contravention of the conditions of the Environmental Clearance is evidenced from the half yearly Compliance Report dated 26.05.2018 submitted by Respondent No. 6 for the period October 2017 to March 2018. The Compliance Report notes that 'out of four pits within the mining lease, one is water logged, two are temporary backfilled and only one mine is in operation and it falls under Survey No. 51/1,51/2,51/3,51/4,51/5,51/6,51/7A,51/7B,52/1,26/2,26/3,26/7,58/1'. Such is a clear indication of non-compliance with specific condition (vi) by Respondent No. 6.
8. Respondent No. 6 has attempted to mislead the authorities by passing off the multiple mine pits located at Survey No. 51/1,51/2,51/3,51/4,51/5,51/6,51/7A,51/7B,52/1,26/2,26/3,26/7,58/1 as one mine pit. Such is a fallacy and deliberately intended deception in an attempt to skirt away from the mandates of the Environmental Clearance. It is evident upon examination of maps and reports of the Talathi of Kanyal village that new Survey No. 51 in revenue village Mahartalewadi is the same as Old Survey No. 203 and New Survey No. 26 is the same as Old Survey No. 235 in revenue village Kanyal. Therefore, there are two distinct pits which are being passed off as one operational pit, such being an attempt to mislead the authorities and avoid liability for non-compliance of Environmental Clearance conditions.

It is also evident from various aerial and satellite imagery that there are 6 pits that are being kept open simultaneously by Respondent No. 6.

9. Therefore, it is incorrect to say that there is an issue of limitation just because the Mauli pit was closed down in 1990 and currently is a water reservoir and water from this reservoir is used for irrigation purposes by the villagers or that dumping of mining waste stopped before 1990.
10. It is submitted that this Hon'ble Tribunal has in the matter of **Forward Foundation v. State of Karnataka reported in 2015 ALL (1) NGT Reporter (2) (Delhi) 81** clarified the scope of 'recurring cause of action'. Relevant extracts of the said judgment have been cited below-

"32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. 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. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently."

(Emphasis supplied)

Thus, in present Original Application also the gross violation and non-compliance of Environmental Clearance have been taking place continuously giving rise to a fresh legal injury and triggering a fresh lease of limitation.

11. It is submitted that the Hon'ble Supreme Court in the matter of ***Mantri Techzone Pvt. Ltd v. Forward Foundation and Ors , 2019 SCC OnLine SC 332*** dated 05.03.2019 has held the following with respect to Jurisdiction of the Hon'ble Tribunal under Section 14 and 15 of the NGT Act, 2010:

*"42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, **this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.***

*43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, **wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.***

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading....

45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years.

Therefore, the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.

*46. Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra. **the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.***

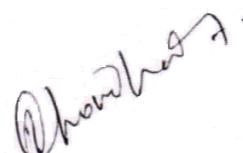
....
49.The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose....

50. In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal."

THROUGH



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Place:- Pune/Delhi

Dated:- 07.020.2022