

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

Original Application No.31/2023(WZ)

Prasad M. Mulye

.....Applicant

Versus

M/s. Bharat Serums and Vaccines Ltd. Ors.

....Respondent(s)

Date of hearing: 29.01.2024

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant	:	None appeared
Respondent(s)	:	Mr. Bhash H. Mankad, Advocate for R-1/PP Ms. Manasi Joshi, Advocate along-with Ms. Pooja Natu, Advocate for R-2/MPCB Mr. Prashant Chavan, Advocate i/b Mr. Navdeep Vora, Advocate & Associates for R-3/MIDC Mr. Pravin Patil, Director of DISH, for R-5 Mr. Aniruddha Kulkarni, Advocate for R-6/CPCB Mr. Pushkal Mishra, Advocate for R-7/MoEF&CC

ORDER

1. From the side of applicant, an e-mail dated 29.01.2024 has been received from Mr. Sanjay Jadhav, Office Manager of learned counsel Asim Sarode and Associates, informing us that the learned counsel Mr. Asim Sarode has suddenly suffered from a Sinus attack along-with cough and cold. Hence, he is unable to appear today. He has also mentioned in this e-mail that previously he had filed a detailed Rejoinder dated 24.01.2024 before this Tribunal and that respondents might require sufficient time to file their replies. Considering the same, he has prayed that this case may kindly be listed after 20th February, 2024 or as per the convenience of this Tribunal.

2. This prayer for adjournment is being vehemently opposed by the learned counsel Mr. Bhash H. Mankad representing respondent No.1-

Managing Director- M/s. Bharat Serums and Vaccines Ltd., who apprised us that he had earlier sent us an e-mail dated 01.01.2024, where-in it is mentioned that there has been wilful dis-obedience of this Tribunal's orders by the petitioner/applicant. This Tribunal had provided last opportunity to the learned counsel for applicant to file rejoinder affidavit against the affidavits filed by respondents and that the said order is reproduced in this e-mail.

3. Further, it is submitted in this e-mail by the respondent No.1 that despite that order, the petitioner/applicant did not file any affidavit until the next date of hearing i.e. on 09th October, 2023. On the next date of hearing, the Advocate for the Petitioner attempted to file an affidavit-in-Rejoinder, which was neither paginated nor translated nor numbered nor did he serve the same upon the Advocate for respondent No.1. Hence, this Bench took notice of the same and directed the Advocate for the petitioner/applicant to file a copy of the Affidavit-in-Rejoinder that very day itself i.e. on 09th October, 2023. The operative portion of the Order dated 09th October, 2023 has also been quoted in this e-mail.

4. Further, it is submitted in this e-mail by the respondent No.1 that on 01st January, 2024 i.e. after more than 2 and a half months having elapsed, the Affidavit-in-Rejoinder filed by the applicant has neither been served upon the respondent No.1 nor filed/uploaded on the National Green Tribunal Website and till date, it has not been served upon him. Therefore, it is prayed by the learned counsel for respondent No.1 that the said affidavit may not be taken on record and that he is ready to argue in this matter today itself.

5. The learned counsel for respondent No.1 has orally pointed out that an e-mail dated 09.10.2023 has been sent to the learned counsel Mr. Asim Sarode asking for a copy of the rejoinder affidavit filed by him to be served

upon the respondent No.1. But even that has not been respected and a copy of the same has not been served upon him till date.

6. From the side of respondent No.2-MPCB, learned counsel Ms. Manasi Joshi along-with learned counsel Ms. Pooja Natu have appeared.

7. From the side of respondent No.3-Chief Executive Officer, Maharashtra Industrial Development Corporation, learned counsel Mr. Prashant Chavan has appeared.

8. None has appeared from the side of respondent No.4-Superintendent Engineer, Thane Irrigation Circle.

9. From the side of respondent No.5- Director, Directorate of Industrial Safety & Health, Mr. Pravin Patil, Joint Director, DISH has appeared in-person through Video Conferencing, who apprised us that reply affidavit has already been filed.

10. From the side of Respondent No.6- Central Pollution Control Board, learned counsel Mr. Aniruddha Kulkarni has appeared, who apprised us that reply affidavit has already been filed.

11. From the side of Respondent No.7-Ministry of Environment, Forest & Climate Change, learned counsel Mr. Pushkal Mishra has appeared, who submits that no relief is prayed against them, hence no reply affidavit has been filed from their side in this case.

12. It appears that pleadings are complete in this case except that the rejoinder affidavit, which has been filed by the applicant, has not been served upon the learned counsel for respondent No.1, who could not respond to the same.

13. In view of the details given in the e-mail, which has been mentioned by us above, we find it very astonishing that the learned counsel for applicant has failed to serve a copy of the rejoinder affidavit upon the

learned counsel for respondent No.1, despite there being repeated efforts made by the learned counsel for respondent No.1. It is also apparent that the applicant is seeking adjournment on one ground or the other. But today, looking to the fact that the learned counsel for applicant is taking the ground of illness for adjourning the matter, it would be appropriate for us to grant one last opportunity to the learned counsel for applicant to argue in this case finally. It is also not understandable as to why the other counsel, who have also filed their Vakalatnama in this case, are not arguing in this case. There seems to be force in the argument of learned counsel for respondent No.1 that this matter is being deliberately got adjourned by the learned counsel for applicant. It is also apprised by the learned counsel for respondent No.1 that he had to come from Ahmedabad along-with the party, who has come from Mumbai and learned counsel for applicant did not care to inform them earlier that he would not be appearing today.

14. Giving benefit of doubt to the learned counsel for applicant that he might have fallen sick, all of a sudden, we provide one last opportunity to the learned counsel for applicant to argue in this case finally on the next date and no further adjournment would be granted to him. We further direct the learned counsel for applicant to serve a copy of the rejoinder affidavit to the learned counsel for respondent No.1 today itself. If the same is not served today, that rejoinder affidavit will not be read against the respondent No.1.

15. Subsequently, we have heard the argument of learned counsel for respondent No.1 despite the fact that the learned counsel for applicant is not appearing today. He has drawn our attention to the order dated 09.10.2023 passed by this Tribunal, especially in para nos.2 & 3, in which details are contained and submits that he is relying on those arguments.

16. Besides that, our attention is also drawn by the learned counsel for respondent No.1 to the additional affidavit dated 17.01.2024 filed by the

respondent No.3/MIDC, where-in it is mentioned that the respondent No.1 has already produced a Certificate of Irrigation Department dated 28.12.2018 that the Plot No.K-27/1 of Additional Ambernath Industrial Area does not fall under the submerged area of the Chikhholi Dam. Further, it is pointed out in this affidavit that a Certificate dated 31.01.2020 has also been issued to the respondent No.1 by the IT Registration, Government of Maharashtra, Office of the General Manager, District Industrial Centre, Thane, annexed at page no.925 of the paper book, which shows that the respondent No.1 is using the said premises of Reliable Plaza IT Park, Airoli, Navi Mumbai for back office operations and not for industrial operations. Moreover, it is also stated in this affidavit that the MIDC does not have any powers either to grant the Consent to Operate or to monitor the activities of industry from the environmental point of view.

17. Thereafter, the learned counsel for respondent No.1 has drawn our attention to the Combined Consent and Authorization (CC&A) dated 30.05.2023 granted by the MPCB, a copy of which has been served to us today only, which is taken on record and it is indicated therein that the same has been granted on 30.05.2023, which is valid up to 31.12.2024 in Orange Category. After having drawn our attention to this, it is submitted by the learned counsel for respondent No.1 that present application does not have any force and it needs to be rejected forthwith.

Put up this matter for further consideration on 20.03.2024

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 29, 2024
Original Application No.31/2023(WZ)
P.Kr