

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

Original Application No.97/2023(WZ)

Kailash Chima Chakor

.....Applicant

Versus

State of Maharashtra & Ors.

....Respondent(s)

Date of hearing: 22.03.2024

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

Applicant : Mr. Ajay T. Kanawade, Advocate along-with
Mr. Krushna N. Bhosale, Advocate

Respondent(s) : Ms. Swati Pandit, Advocate for R-2 to R-4
Mr. Rahul Garg, Advocate for R-6/MoEF&CC
Mr. Atul J. Pathak, Advocate for R-7/Ministry of Mines
Mr. Aniruddha Kulkarni, Advocate for R-8/MPCB
Mr. Saurabh Kulkarni, Advocate for R-9 to R-11

ORDER

1. From the side of the applicant, learned counsel Mr. Ajay T. Kanawade has appeared, who has filed rejoinder affidavit dated 21.03.2024 to the reply affidavits of respondent Nos.8 and respondent Nos.9 to 11, which is taken on record.

2. From the side of respondent Nos.9 to 11/PP, learned counsel Mr. Saurabh Kulkarni has appeared, who has filed reply affidavit dated 19.03.2024, wherein it is submitted in para no.11 that the present Original Application is not maintainable, as the applicant is seeking quashing of the Consent to Operate dated 16.06.2022, which is annexed at page no.38 of the paper book, for which the appropriate forum is the

Appellate Authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974.

3. We do not find any rebuttal of the said averment made by the learned counsel for respondent Nos.9 to 11/PP that the appeal is not maintainable in the rejoinder affidavit filed by the learned counsel for applicant today.

4. At this stage, during the argument, it transpired that the MPCB had issued Circular dated 04.03.2020 in respect of amendment in Siting Criteria for Stone Crusher units in the State of Maharashtra, wherein one of the criteria to be considered for establishing of Stone Crusher Units is also that minimum distance shall be 500 mtrs. from Human Habitation, which is being said in the case in hand to have been breached by the Project Proponents, as the distance is found to be less than that.

5. To this, the learned counsel for respondent Nos.9 to 11 has rebutted by arguing that the same Circular under the Head: A. Applicability, under sub-clause 2 says that the permissions/grant of NOC shall be issued by the concerned local body/concerned planning authority.

6. Having cited above provision, it is argued by the learned counsel for respondent Nos.9 to 11 that local body herein is the Gram Panchayat, Village- Pimple, which had passed Resolution approving the establishment of the Stone Crusher Units by their Resolution dated 28.08.2019, which has been mentioned in the affidavit filed by the State PCB dated 17.01.2024 in para no.8.

7. It is the stand of the State PCB that since the Gram Panchayat had passed that Resolution prior to coming into force the said Circular as

they had granted Consent to Operate to the Project Proponents on 16.06.2022, we are of the view that the argument made by the learned counsel for respondent Nos.9 to 11 is correct to the extent that the main prayer made by the applicant in the present Original Application is seeking cancellation of Consent to Operate under Orange Category granted to respondent Nos.9 to 11 dated 16.06.2022, for which appeal would lie under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974.

8. At this stage, the learned counsel for applicant agreed to withdraw the present application to approach the appropriate forum and prayed before us that this application may be dismissed as withdrawn with liberty to file fresh at appropriate stage, if so required.

9. We allow the prayer of the learned counsel for applicant and dismiss this application as withdrawn with liberty as prayed for.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

March 22, 2024
Original Application No.97/2023(WZ)
P.Kr