

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

[Through Physical Hearing (with Hybrid Option)]

ORIGINAL APPLICATION NO.191 OF 2024 (WZ)

P.V. Patel **... Applicant**

Versus

State of Maharashtra & Anr. **... Respondents**

WITH

ORIGINAL APPLICATION NO.207 OF 2023 (WZ)

The Corner Co-op. Housing Society Ltd. **... Applicant**

Versus

Member Secretary, MPCB & Ors. **... Respondents**

Date of Hearing : 02.04.2025

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

Applicant : None for the Applicant in O.A No.191/2024
Ms. Yamuna Parekh, Advocate for the Applicant in O.A.No207/2023

Respondents : Mr. Aniruddha Kulkarni, Advocate for MPCB in both O.As.

ORDER

O.A. NO..191 OF 2024 (WZ) :

1. Applicant – P.V. Patel in this O.A. has not appeared. But we find that the issue raised in this O.A. is related to the pollution being spread by Ready Mix Concrete (RMC) Plant of Ultra Tech Cement Company, located in close vicinity of residential area near Ekasar Metro Station, Borivali (West Mumbai), which is detrimental to the health of local residents. The cognizance was taken in the matter by the Principal Bench of this Tribunal vide order dated 27.08.2024. A Joint Committee was ordered to be constituted comprising Maharashtra State Pollution Control Board (MPCB) and Collector, Borivali. Thereafter, this matter was transferred to this Bench.

2. During hearing on 04.11.2024, learned counsel Mr. Aniruddha Kulkarni, representing for the MPCB, appeared and stated that the nodal agency of the Joint Committee was MPCB and further apprised that similar issue is involved in connected matter i.e. Original Application No.207 of 2023 (WZ), in which there was no Joint Committee constituted, but the MPCB had submitted its report in the said Original Application. Therefore, this Tribunal had directed that these two matters be placed before us for being taken up together.

3. Thereafter, in our order dated 26.11.2024, the reply filed by the MPCB in O.A. No.207 of 2023 was considered in paragraph No.2 of that order and after having considered the same, we found that M/s N.N. Enterprises, was involved in manufacturing of ready-mix concrete, which has been granted Consent to Establish (CTE) on 08.09.2020 and Consent to Operate (CTO) on 10.06.2021, which expired on 31.05.2024 and thereafter, no renewal was sought by M/s N.N. Enterprises. It is also recorded in that order by us that several violations were noticed for which directions were issued from time to time and the said Industry was directed to be closed down vide letter dated 01.12.2023 and bank guarantee to the tune of Rs.50,000/- was forfeited for non-compliance of Consent conditions and the Industry was further directed to submit fresh bank guarantee of Rs.1,00,000/- and finally the stop-work order was also issued by the MPCB vide letter dated 23.03.2024. Pursuant to that, we had, by the same order dated 26.11.2024, directed MPCB to calculate the amount of Environmental Damage Compensation (EDC) for past violations and submit an affidavit in that regard.

4. In pursuance with the said order dated 26.11.2024, the MPCB calculated the amount of EDC to the tune of Rs.39,37,500/- , which has been stated in their affidavit dated 27.01.2025 filed on 28.01.2025, wherein total number of days of violation is recorded as 525 days for the period 31.08.2021 to 12.11.2021 (73 days) and from 03.04.2023 to 28.06.2024 (452 days) and applying the principles/methodology laid down

in the case of *Paryavaran Suraksha Samiti*, has calculated the EDC amount, as stated above. We fail to understand as to how this period of 73 days and 452 days has been arrived at. Because, during argument, learned counsel for the MPCB has stated that on 30.10.2023, a complaint was made by the applicant of O.A. No.207 of 2023 – The Corner Cooperative Housing Society Ltd and thereafter, on 03.11.2023, a visit was made by the officials of MPCB and found violations as pointed out by the said applicant to be correct. At this juncture, we enquired from learned counsel for the MPCB as to what violations have been committed by the Project Proponent, M/s N.N. Enterprises – respondent No.3, whereupon he drew our attention to their report dated 25.07.2024 submitted in O.A. No.207 of 2023, wherein it is recorded in paragraph No.3 sub-clause (iv) that a visit was made by the officials of the MPCB of the site in question on 03.11.2023 and observed that RMC plant had not provided sprinkling system along the periphery of the premises, inadequate dust collection system was there to four number of silo and needed all silos damper proof mechanism to avoid leakage of vacuum, the Project Proponent failed to provide roof top sprinklers at storage area of sand and stone/aggregates, etc. It also failed to carry out ambient air quality monitoring on 03.11.2023 for 24 hours and the ambient level was shown to be marginally exceeding the National Ambient Air Quality Standards for parameter PM₁₀.

5. At this juncture, we enquired from the learned counsel for the applicant in O.A. No.207 of 2023 as to whether these violations, which are noted in the report of MPCB, referred to above, were mentioned in the terms and conditions of the Consent to Establish (CTE) and Consent to Operate (CTO), to which learned counsel drew our attention to CTE dated 08.09.2020, annexed at pages 16 to 20 of the paper-book of O.A. No.207 of 2023, wherein these conditions, which are cited above, are quoted in sub-paragraphs of paragraph No.5. At this stage, we also made a query from the learned counsel for MPCB as to which are the conditions

mentioned in the CTO dated 10.06.2021 (annexed as Annexure-II at pages 21 to 23 of the paper-book), which are stated to have been violated, to which learned counsel stated that he would have to seek instructions in this regard.

6. We also orally pointed out to the learned counsel for the MPCB that we could not follow the approach adopted by the MPCB in calculating the period of violations, cited above by us, because on what basis this period/dates have been taken as the dates of violation and hence, we direct the MPCB to file a separate/additional affidavit in this regard, clearly indicating that on what basis, violations have been committed for the aforesaid period, before we proceed to pass final order.

7. We are also curious to know from the MPCB as to how even if amount of EDC would be directed to be levied, could it be levied from the Project Proponent when the same is not found at the site in question. This aspect shall also be clarified in the affidavit to be filed by MPCB.

8. An additional affidavit shall be filed by the MPCB in respect of above aspects within two weeks from the date of uploading of this order positively.

O.A. NO..207 OF 2023 (WZ) :

9. As regards O.A. No.207 of 2023, learned counsel for the applicant submits that in this application, as per the order of this Tribunal, service of notice has been effected to the Project Proponent – M/s N.N. Enterprises through paper publication. An affidavit in that regard dated 24.02.2025 has been submitted, which is taken on record. Learned counsel Ms. Yamuna Parekh, representing the applicant in this O.A. further submitted that the Project Proponent – M/s N.N. Enterprises were found dismantling certain material from the site in question, taking it away from the site. So it cannot be stated that the said respondent – M/s N.N. Enterprises is not found nor is it residing at the address of the said Industry. However, we also would like to have all the details of the site in question because it appears that the said Industry is not in place at the site address.

10. Put up these matters for next consideration/disposal thereof on 29.04.2025.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

April 02, 2025

ORIGINAL APPLICATION NOs.191/2024 and 207/2024 (WZ)

npj