

Item No.1

(Pune Bench)

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

THROUGH PHYSICAL HEARING (WITH HYBRID OPTION)

**Review Application No.03/2024(WZ)
IN
Original Application No.32/2024(WZ)**

Anuj Abhay Deshpandey & Anr.

.....Applicant(s)

Versus

The Commissioner, PMC, Pune & Anr.

....Respondent(s)

Date of hearing: 21.05.2024

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

Applicant : Mr. Maitreya Ghorpade, Advocate

Respondent : Mr. Mayur Ovhal, Advocate h/f
Mr. Rahul Garg, Advocate for R-1/PMC

ORDER

1. This review application has been filed seeking review of the order dated 22.02.2024 passed by this Tribunal in Original Application No.32/2024(WZ) mainly on two grounds.

2. It is orally submitted by the learned counsel for review applicants that in para no.5 of the impugned Order/Judgment, it is recorded by this Tribunal that "it is stated by the learned counsel for the applicants that no proof in support of above compliances (compliances were given by the PMC in tabular form, which is quoted in para no.4 of the said Order/Judgment) has been produced on record by respondent No.1-PMC, to which learned counsel for respondent No.1 states that he would file compilation in support of whatever has been submitted in the above tabular form today itself". In this regard, the learned counsel for review

applicants has argued that without the said compilation having been filed by the respondent No.1, the impugned Order/Judgment has been passed by the Tribunal, hence the same being the error on the face of it needs to be reviewed.

3. The other ground, which has been set up by the learned counsel for review applicants, is that in para no.14 of the present review application, it has been clearly stated by the review applicants that in the affidavit dated 16.02.2024 of PMC, the submissions contained were in para nos.5(h) to 5(j) at page nos.55-56 of the paper book to the following effect:-

“h. The construction of Water Storage Tanks at Gut No. 262, Fergusson College Hill will save a lot of energy consumption that would be required for direct Water Distribution through pipelines spread over about 8.5 sq. km. area within Pune city as Hill has a height and therefore there will be benefit of gravitation force.

i. Engineering analysis has been carried out satisfying the water demand of population from 2022 to 2047 and accordingly the highest location is selected to distribute water by gravity.

j. There is no other alternative piece of land suitable to construct these water reservoirs in order to cater water in the water zones in the vicinity of this hill. The high altitude topographical position will help water distribution under gravity. Pumping of around 18.5 million litres of water per day over 8.5 sq. km area, instead of building water tanks on hills will have a larger impact on environment due to huge power consumption.”

4. In view of above-mentioned submissions of PMC, it is urged by the learned counsel for review applicants that the PMC's submissions have not been supported by any scientific assessment or comparative analysis detailing the studies, which measure the total energy required to pump 18.5 million litres of water per day via electric pumps versus total energy saved by utilizing gravitational force of the hills as various factors in the total ecological cost of building are involved in the impugned project by felling of trees and diverting forest land.

5. Our answer to the 1st ground, which has been set up by the learned counsel for the review applicants, is that we had believed the report of PMC, which is quoted in tabular form in para no.4 of the impugned Order/Judgment, wherein at point no.7, following is recorded:-

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| 7 | ix. To improve the Forest/ Tree cover and to reduce pollution, as mandated in National Forest Policy, 1988 and Environmental (Protection) Act, 1986 respectively, the User Agency shall develop a separate nursery at one or more places to raise at least 1000 seedlings of forestry species along with bamboo, fruit bearing, medicinal, ornamental and indigenous/local every year. At least 50% of seedlings shall be planted by User Agency in the vicinity of project area including forest area and for hand holding with local people residing in vicinity of proposed area, User Agency shall voluntary distribute remaining 50% of seedlings to them free of cost. | The contracting company M/s L&T has submitted their report of plantation of 54750 saplings in the vicinity of project area along with purchase invoices of saplings from local nursery and photographs of plantations vide their letter no. LTCD/PUNE-SR/WET/WSD/RR/2020-21/1012 dated 19.9.2020 | Condition mentioned in letter of MOEF & CC vide No. FC-1/MH-175/2021-NGP/8543 dated 25.8.2021 |
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6. If the review applicants had any doubt that this has not been done, they could have given evidence in support of that and even today, he could have moved an execution application for execution of the said impugned Order/Judgment, which we had passed, instead of review of the same.

7. As regards the other ground, which has been cited by us above, the learned counsel for review applicants has relied upon the Judgment of Hon'ble Supreme Court passed in the matter of *Vellore Citizens Welfare Forum v. Union of India and Ors.* [(1996) 5 SCC 647], wherein the Hon'ble Hon'ble Supreme Court had clearly stated that the 'onus of proof' is on the actor or the developer/industrialists to show that their action is environmentally benign and not upon the applicant.

8. We are of the view the facts of that Judgment are different and in the present case, we had considered the matter thoroughly and believed the report, which was submitted by the PMC, which was based on

engineering study, in rebuttal of which, nothing has been submitted before us by the learned counsel for review applicants. Therefore, we do not find any force in the said argument as well.

9. In view of above discussion, we are of the view that the present review application does not have any force and accordingly, it is rejected.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

May 21, 2024
Review Application No.03/2024 IN
Original Application No.32/2024(WZ)
P.Kr