

Item No.1

(Pune Bench)

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

[Through Physical Hearing (With Hybrid Option)]

**ORIGINAL APPLICATION NO.32 OF 2024 (WZ)
WITH
I.A.NO.38/2024 IN O.A. NO.32/2024**

Anuj Abhay Deshpande & Ors.

.... Applicants

Versus

Pune Municipal Corporation & Ors.

.... Respondents

Date of hearing : 22.02.2024

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

Applicants : Ms. Supriya Dangare, Advocate

Respondents : Mr. Rahul Garg, Advocate for R-1 with Mr. Rajesh Bhutkar,
Dy. Engineer, Water Supply Department, PMC

ORDER

1. In compliance with our previous order dated 19.02.2024, the applicants have filed rejoinder to the reply submitted by respondent No.1 – PMC.

2. From the side of respondent No.1, it was required at the time of earlier hearing that the learned counsel for respondent No.1 may point out as to what steps were taken by respondent No.1 in compliance with the judgment and order of this Tribunal dated 02.12.2021 passed in Original Application No.46 of 2020 (Dr. Sushma Date and two others Vs. Pune Municipal Corporation and five others), wherein following was held :

*“33. In the light of the recent decision and more particularly, a larger Bench of Hon’ble Supreme Court of India in a decision reported in **2011(1) SCC 744** (cited supra) distinguishing the earlier Judgment reported in **1997(2) SCC 267**, **“it cannot be said that the construction of water tanks/allied activities on the lands***

in Law College hill and Fergusson College hill on the part of the 1st Respondent cannot be faulted. It is also to be noted at this juncture that as per a stand of the 3rd Respondent, a proposal for diversion of 'forest land' made by the 1st Respondent-Corporation, is also pending consideration and that apart, the 6th Respondent has also granted in-principle approval for the diversion for the 'reserved forest land' in Survey No.262 Bhambudra village in respect of 0.0571 ha identified as 'forest land' at Pashan and Sutarwadi area, subject to many very conditions and also made it clear that legal status of the 'forest land' shall remain unchanged.

34. However, taking into consideration facts and circumstances, the Respondent Nos.2, 3 and 6, shall cause periodical as well as surprise inspection and if any infractions/violations are noted, shall take immediate, necessary and appropriate actions on accordance with law against the concerned violators. The said Respondents shall also ensure that the trees claimed to have been planted by way of afforestation, are reared and maintained properly so that adequate green/forest cover is created.

35. In the result, the Original Application is dismissed subject to above observations. However, in the circumstances of the case, there shall be no order as to costs.”

3. The aforesaid direction was issued by this Tribunal because in that Original Application, the applicants, who were residents of Deccan Gymkhana/Erandwane areas of the city of Pune and invoking jurisdiction of this Tribunal, raising the issue of illegal construction activities undertaken by respondent No.1 – PMC through its contractor. By referring the illegal activities, they had alleged that illegal construction of water tanks on three forest lands was being done, which included Fergusson College Hill (Gat No.262) also, regarding which the present Original Application has been filed. The matter was thoroughly considered by this Bench and thereafter, the above quoted order was passed.

4. The learned counsel for respondent No.1 has submitted, in tabular form, the compliances done in respect of the said order dated 02.12.2021, which is as follows:

Pune Municipal Corporation

Name of Work = Construction of water tanks at Fergusson Hill, village Bhamburda S.No. 262.
Subject :- Compliance of Conditions stipulated in permission given by Forest Dept.

Sr.No.	Condition relevant to Pune Municipal Corporation	Compliance	Remarks
1	Legal status of forest land shall remain unchanged	The status has been maintained as the ownership of the land is still with Forest Dept.	Condition mentioned in letter of MOEF & CC vide No. FC-1/MH-175/2021-NGP/8543 dated 25.8.2021
2	<u>Compensatory afforestation</u> a. Compensatory afforestation shall be taken up by the Forest Department over 1.00 ha degraded forest land in Gut No. 425 at Village- Vadgaon Shinde, Taluka- Haveli, District- Pune at the cost of the User Agency. As far as possible, a mixture of local indigenous species along with 10% RET species of Pune District shall be planted and monoculture of any species may be avoided.	As per the demand note from forest dept PMC has deposited amount of Rs. <u>7,30,053/-</u> towards <u>Compensatory afforestation</u> at Gut No. 425 at village Vadgaon Shinde Tal Haveli Dist Pune on 1 ha. Of degraded forest area @ 1000 plants per ha.	Condition mentioned in letter of MOEF & CC vide No. FC-1/MH-175/2021-NGP/8543 dated 25.8.2021
3	iii. The cost of compensatory afforestation at the prevailing wage rates as per compensatory afforestation scheme and the cost of survey, demarcation and erection of permanent pillars if required on the CA land shall be deposited in advance with the The scheme may include appropriate provision for anticipated cost increase for works scheduled for subsequent years;		Condition mentioned in letter of MOEF & CC vide No. FC-1/MH-175/2021-NGP/8543 dated 25.8.2021
4	a. The State Government shall charge the Net Present Value (NPV) for the 0.7031 The Seste Gea. to be diverted under this proposal from the User Agency as per the orders of the Hon'ble Supreme Court 2008 India dated 30/10/2002 82003, 28/03/2008, 24/04/2008 09/05 by the vide in WP C No. 202/1995 and as per the guidelines issued by the Ministry vide letters No 5-1/1998-FC (PLII) dated 18/09/2003, as well as letter No. 5-2/2006-FC dated 03/10/2006 and 5-3/2007-FC dated 05/02/2009 in this regard; b. Additional amount of the NPV of the diverted forest land, if any, becoming due after finalization of the same by the Hon'ble Supreme Court of India on receipt of the report from the Expert Committee, shall be charged by the State Government from the User Agency. The User Agency shall furnish an undertaking to this effect;	As per the demand note from forest dept PMC has deposited amount of Rs. <u>4,40,141/-</u> plus Rs. <u>1,70,272/-</u> towards NPV ✓	Condition mentioned in letter of MOEF & CC vide No. FC-1/MH-175/2021-NGP/8543 dated 25.8.2021
5	User agency shall restrict the felling of trees to minimum number in the diverted forest land and the trees shall be felled under the strict supervision of the State Forest Department and the cost of felling of trees shall be deposited by the User Agency with the State Forest Department. Further, maximum number of trees below 60 cm girth shall be translocated by State Forest Department at the cost of User Agency;	As per the demand note from forest dept PMC has deposited amount of Rs. <u>54,480.79</u> towards cutting of the trees. PMC has taken the permission of tree authority of PMC, to cut the within the construction area and will be cut in supervision of forest dept.	Condition mentioned in letter of MOEF & CC vide No. FC-1/MH-175/2021-NGP/8543 dated 25.8.2021
6	vi. All the funds received from the user agency under the project shall be transferred/ deposited to CAMPA fund only through e-portal (https://pariveshaic.in/);	Conditions fulfilled by Pune Municipal Corporation.	Condition mentioned in letter of MOEF & CC vide No. FC-1/MH-175/2021-NGP/8543 dated 25.8.2021

	vii. The complete compliance of the FRA, 2006 shall be ensured by way of prescribed certificate from the concerned District Collector;		
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 indigeness/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-I/MH-175/2021-NGP/8543 dated 25.8.2021
8	Sped regulating signage will be erected Protected Areas/ Forest Areas; along the road at regular intervals in the protected area of permanent pillars if required on the CA land shall be deposited in advance with the The scheme may include appropriate provision for anticipated cost increase for works scheduled for subsequent years;	As per the demand note from forest dept PMC has deposited amount of Rs. 11,000/- towards Compensatory afforestation After completion of construction activities PMC will carry out this activity. PMC has submitted the undertaking to forest Dept.	Condition mentioned in letter of MOEF & CC vide No. FC-I/MH-175/2021-NGP/8543 dated 25.8.2021
9	xii. The pipeline shall be laid down 1.5 meter below the ground and after laying down of pipe line the ground will be leveled;	This will be followed at the time of laying pipelines. PMC has submitted the undertaking to forest Dept.	Condition mentioned in letter of MOEF & CC vide No. FC-I/MH-175/2021-NGP/8543 dated 25.8.2021
10	xiii. User Agency shall obtain Environmental Clearance as per the provisions of the Environmental (Protection) Act, 1986, if applicable;	NA as this is public infrastructure of water supply project	Condition mentioned in letter of MOEF & CC vide No. FC-I/MH-175/2021-NGP/8543 dated 25.8.2021
11	xiv. The layout plan of the proposal shall not be changed without prior approval of Central Government; xv. No labour camp shall be established on the forest land;	There will be NO change in location of the project site. Labour camp will not be allowed to establish at construction site. PMC has submitted the undertaking to forest Dept.	Condition mentioned in letter of MOEF & CC vide No. FC-I/MH-175/2021-NGP/8543 dated 25.8.2021
12	xvi. Sufficient firewood, preferably the alternate fuel, shall be provided by the User Agency to the labourer after purchasing the same from the State Forest Department or the Forest Development Corporation or any other legal source of alternate fuel;	NA PMC has submitted the undertaking to forest Dept.	Condition mentioned in letter of MOEF & CC vide No. FC-I/MH-175/2021-NGP/8543 dated 25.8.2021
13	xvii. The boundary of the diverted forest land shall be suitably demarcated on ground at the project cost as per the directions of the concerned Divisional Forest Officer.	PMC has demarcated the boundary of the diverted forest land according to the GPS coordinates of the proposal before construction activity. PMC has submitted the undertaking to forest Dept.	Condition mentioned in letter of MOEF & CC vide No. FC-I/MH-175/2021-NGP/8543 dated 25.8.2021

14	<p>xviii. No additional or new path will be constructed inside the forest area for transportation of construction materials for execution of the project work;</p> <p>xix. The period of diversion under this approval shall be co-terminus with the period of lease to be granted in favour of the user agency or the project life, whichever is less;</p> <p>xx. The forest land shall not be used for any purpose other than that specified in the project proposal;</p> <p>xxi. The forest land proposed to be diverted shall under no circumstances be transferred to any other agencies, department or person without prior approval of Govt. of India;</p> <p>xxii. Violation of any of these conditions will amount to violation of Forest (Conservation) Act, 1980 and action would be taken as per the MoEF&CC Guideline F. No. 11- 42/2017-FC dt 29/01/2018;</p> <p>xxiii. Any other condition that the Ministry of Environment, Forests & Climate Change may stipulate from time to time in the interest of conservation, protection and development of forests & wildlife;</p> <p>xxiv. The compliance report shall be uploaded on e-portal (https://parivesh.nic.in/);</p>	<p>The compliance report has been approved by the Addl. Principal Chief Conservator of Forest & Nodal officer vide letter No. desk no. 17/Noctd/Punq/ID-12764(19)/191/2022-23 dated 25.4.2022 and uploaded on e-portal.</p>	<p>Condition mentioned in letter of MOEF & CC vide No. FC-I/MH-175/2021-NGP/8543 dated 25.8.2021</p>
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5. Copy of above compliances in tabular form has been served on the learned counsel for the applicants. It is stated by the learned counsel for the applicants that no proof in support of above compliances 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.

6. From the side of the applicants, amendment application has also been moved today, which has still not been numbered because the same is e-filed wrongly in 'document section' and not in appropriate section, but even then, we take it for consideration. By this amendment application, it is prayed that following amendment in the prayer clause may be permitted:

“d) The Respondent No.1 may kindly be directed to constitute a cell for the discussion with the stake holders and redressal of their grievances.

e) *The Applicants alternatively pray that if this Hon'ble Tribunal considers it appropriate for the Respondent No.1 to go ahead with the project, the Respondent No.1 may kindly be directed to specify and adopt environment friendly green mechanism for carrying out the project in consultation with the experts in the field.*

f) *In alternative the Respondent No.1 may be directed to assign creation and maintenance of green cover by way of restitution and restoration to a company under the Corporate Social Responsibility scheme which Respondent No.1 would periodically supervise and publish report of the same in the public domain."*

7. Besides above, pleadings are also sought to be incorporated in the Original Application in the form of addition of paragraph Nos.7(a), 7(b), 7(c), 7(d), 7(e) and 7(f). When enquired from the learned counsel for respondent No.1 as to whether respondent No.1 would like to file objection against the same, he argued that the matter is at final stage and by applying constructive *res judicata*, these amendments should not be allowed because this issue has already been decided by this Tribunal in O.A. No.46 of 2020 (Dr. Sushma Date and others Vs. Pune Municipal Corporation and others).

8. We find from the present amendment sought to be incorporated in the Original Application that additional reliefs are prayed to be included to the effect that a direction be issued to respondent No.1-PMC to constitute a cell for the discussion with the stake holders and for redressal of their grievances; if this Tribunal considers it appropriate for respondent No.1 to go ahead with the project, respondent No.1 be directed to specify and adopt environment friendly green mechanism for carrying out the project in consultation with the experts in the field and respondent No.1 be directed to assign creation and maintenance of green cover and it should be done by way of restitution. This work of setting up of green cover should be given to a private company, who be ordered to

perform the same under the Corporate Social Responsibility (CSR) Scheme and that respondent No.1 be directed to periodically supervise the same. Though the above amendment application (I.A.) is being opposed by the learned counsel for respondent No.1, we deem it appropriate to allow the same. The amended copy of O.A. shall be filed today.

9. The present Original Application has been filed with the prayer that respondent No.1 be directed to change the location of the construction of water tanks considering the environmental damage and direction be issued to respondent No.1 to stop the work of the construction forthwith.

10. In the body of the Original Application it is submitted that the applicants, who are residents of Pune and regularly visit Fergusson College hill Gat No.262 of village Bhamburda, Taluka Haveli, District Pune, found that construction activity of water tanks was undertaken by respondent No.1-PMC. There were already two water tanks existing, measuring approximately 150 mtrs x 80 mtrs and 60 mtrs x 70 mtrs, respectively, which were constructed in 2006-2007. These water tanks were never in use till date since their inception. The portion of land which has already been excavated for the existing water tanks can be utilized for the construction which is being undertaken by respondent No.1. It appears that respondent No.1 has started construction of these water tanks considering the alleged additional requirement of water for the city of Pune, which is just adjacent to the old water tanks. It is also stated that while earlier old water tanks were constructed, large number of trees were felled and that now construction, which is going to be undertaken, will add to the damage of environment. Further it is mentioned that the portion of land on which respondent No.1 is proposing construction of water tanks is admittedly a Reserve Forest. Respondent No.1 under the "Equitable Water Supply Project" has started

construction of 82 new water tanks in the city and the said task is entrusted to PMC-Water Supply Department and for this, respondent No.1 has engaged services of M/s Studio Galli Ingegneri to study the existing water supply system, storage and prepare a detailed project report to cater the water requirement of the city of Pune considering the projected population till the year 2047. Respondent No.1 has obtained in-principle clearance and final approval from the MoEF&CC on 24.05.2022. Respondent No.1 has also obtained necessary permission for tree cutting from the Tree Authority. It is further submitted that the issue was earlier raised before this Tribunal in O.A. No.46/2020 relating to illegal construction activities by respondent No.1-PMC, which was disposed of by judgment and order dated 02.12.2021, copy of which is annexed as Annexure-B. According to the applicants, the present application is being filed under 'Precautionary Principle' and although this Tribunal has considered the issue earlier, the present application is different on the following points:

- “(i) By the present application, the applicant is not challenging the construction activity to be 'non forest activity' in the forest land.*
- “(ii) The applicants, in the present application, are not contending that the construction of the water tank is illegal because the same has been adjudicated by this Tribunal in O.A. No.46/2020.”*

But it is clarified by the applicants that they have approached this Tribunal with respect to the following issues:

- “(i) The applicants are raising the issue of site selection.*
- “(ii) The applicants are strongly objecting the tree cutting.*
- “(iii) The fundamental right to have potable water cannot supersede the fundamental right to have healthy and clean environment.*

11. We find that whatever prayers have been made in the present Original Application alongwith the prayers stated in the amendment application, sought to be added in the original application, are nothing but more or less the same which had already been considered by this Tribunal in O.A. No.46/2020 (Dr. Sushma Date and others Vs. Pune Municipal Corporation and others) by judgment dated 02.12.2021, operative part of which has already been quoted by us above.

12. It would have been better for the applicants to seek execution of the said order passed by this Tribunal on 02.12.2021 instead of filing fresh Original Application. Be that as it may, by the amended prayer (e), it is prayed that if this Tribunal considers it appropriate for the respondent No.1 to go ahead with the project, the respondent No.1 may be directed to specify and adopt environment friendly green mechanism for carrying out the project in consultation with the experts in the field. That means that this relief itself shows that the applicants are in agreement that the said project should be allowed to go on with the said rider which has been prayed in the amended prayer.

13. Since after having heard both the sides and perused the record, we find that when the matter was already considered by this Tribunal in O.A. No.46/2020, it is also apparent that there is no bar to construct a water tank for supply of potable water in reserved forest land as per the order of the Hon'ble Supreme Court dated 09.05.2008 passed in Writ Petition (Civil) No.202 of 1995 and I.A. No.826...etc., which has been referred by this Tribunal in paragraph Nos.26 and 27 of its judgment delivered in O.A. No.46/2020 (supra).

14. Therefore, as far as objection regarding the site selection, raised by the applicants, it does not hold water. Looking to the fact that permission has been obtained from MoEF&CC and Tree Authority for tree cutting, which are expert bodies in the field and if they have taken

decision for allowing the project in question to go on, that cannot be assailed in the form of present proceeding. Therefore, we do not find fault with the decisions taken by the Authorities, nor those can be challenged in the present proceeding.

15. The details, which have been given by respondent No.1-PMC about the steps which have been taken by them in pursuance of this Tribunal's order dated 02.12.2021 passed in O.A. No.46/2020, which have been quoted (in tabular form) hereinabove by us, appear to be satisfactory to us.

16. In addition to the steps already taken by respondent No.1, we are inclined to dispose of this Original Application with further following directions:

- (a) Respondent No.1 – PMC shall constitute a cell in the form of appointment of an officer who will hold discussion with the stake holders for redressal of their grievances, at least once in two months. This discussion will be held at the project site. Details of the officer so appointed, namely, his name, his official address and cell/telephone number, etc. shall be disclosed at the project site.
- (b) Respondent No.1-PMC shall adopt environment friendly green mechanism for carrying out the project in consultation with the expert/s in the field.

17. No order as to costs.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 22, 2024
O.A. No.32/2024 (WZ)
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