

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
MISC. APPLICATION No. 36/2013(WZ)**

**CORAM:**

**Hon'ble Shri Justice V.R. Kingaonkar  
(Judicial Member)**

**Hon'ble Dr. Ajay A.Deshpande  
(Expert Member)**

**B E T W E E N:**

**AJAY SHIVAJIRAO BHONSLE,**  
Khalshewadi, Tiroda  
Tal. Sawantwadi,  
District-Sindudurg.  
Maharashtra.

....Applicant

**A N D**

- 1. The Ministry of Environment & Forests  
(MoEF)**  
Through its Principal Secretary,  
Government of India,  
CGO Complex, Lodi Road,  
New Delhi-110 003.
- 2. Maharashtra Pollution Control Board**  
Through its Secretary,  
Kalpataru Point, 3<sup>rd</sup> & 4<sup>th</sup> Floor,  
Sion Matunga Scheme,  
Road No.8, Opp. Cine Planet Cinema,  
Near Sion Circle, Sion(e)  
Mumbai-400 022.
- 3. State of Maharashtra,**  
Through the Chief Secretary,  
Mantralaya, Mumbai,  
Maharashtra.

**4. The District Collector,**  
Sindhudurg,  
Sindhunagari, Oras,  
Maharashtra.

**5. M/s Gogte Minerals,**  
Through its Director  
146, Tilak Wadi,  
Belgaum-560 006  
Karnataka,

**6. M/s Infrastructure Logistics**  
Private Limited,  
Through its Director  
Cicadae De Goa,  
Vainguinim Bech, Donapaula,  
Goa-403 004.

.....Respondents

**Counsel for Applicant:**

**Mr. Nikhil Nayyar**  
**Mr. Tushar Sreyas**  
**Mr. S.R.Bhonsle**

**Counsel for Respondent(s):**

**Mr. R.Nehru for Respondent No.1.**  
**Mr. D.M.Gupte w/ Supriya Dangare for Respondent**  
**Nos.2 & 3.**  
**Mr.Druv Mehta (Sr. Adv.) w/Yashraj Singh Deora,**  
**Swati Mr.Kamat for Respondent No.5.**  
**Mr. Abhijeet Kamat for Respondent No.6.**

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**Date : March 26<sup>th</sup> 2014**

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**P.B.**

**1.** By filing this Application, the Applicant has sought following reliefs:

**i.** “ Direct the Respondent No.1 to withdraw the order of revival vide letter dated 27.5.2013

reviving the Environment Clearance dated 31.12.2008 (No.J-11015/1026/2007-IA, II(M) in terms of Clause 6 of the said environment clearance;

**ii.** Direct the Respondent No.1 to withdraw Environment Clearance dated 31.12.2008 (No.J-1105/1026/2007-IA, II (M), for the project Tiroda iron Ore Mine (Ml area 34.4812 ha and production capacity 0.40 MTPA) at village Tiroda, in Sawantwadi Taluka, in Sindhudurg Dist. In Maharashtra in favour of M/s Gogte Minerals in terms of Clause 6 of the said environment Clearance. ”

**2.** The Application is filed under Section 14(1) of the National Green Tribunal Act, 2010. The Applicant has come out with a case that he has been prompted to file the Application, in order to raise substantial question relating to environment on account of non-compliance of conditions pertaining to Environment Clearance (EC), revised vide letter communication dated May 27<sup>th</sup>, 2013, issued by MoEF for the project of Tiroda Iron Ore Mine, at village Tiroda, (Sawantwadi taluka in Sindhudurg district), in favour of M/s Gogte Minerals i.e. the Respondent No.5.

**3.** It is not necessary to set out rival pleadings with all the material details. Suffice it to say that this is third round of litigation between the parties. The Applicant and Grampanchayat, Tiroda jointly had challenged EC communication issued by MoEF dated December 31<sup>st</sup>, 2008, in favour of M/s Gogte Minerals (Respondent No.5) for mining of iron ore at village Tiroda by filing Appeal No.3 of 2011. The Appeal preferred by them was allowed by the National Green Tribunal (PB), New Delhi, vide Judgment dated September 12<sup>th</sup>, 2011. The Environment Clearance, however, directed to be kept in abeyance and MoEF was called upon to take afresh decision. Thereafter MoEF by order dated May 27<sup>th</sup>, 2013, granted revival to the EC dated December 31<sup>st</sup>, 2008, stipulating certain specific conditions in addition to earlier conditions. The MoEF had noticed certain deficiencies, which the Respondent No.5, was called upon to rectify.

**4.** By filing Appeal No.2/2013, the Applicant and the Grampanchayat Tiroda, again challenged revival of the said EC granted by the MoEF vide communication dated May 27<sup>th</sup> 2013. This Bench of the NGT held it as barred by limitation and as such this Bench dismissed the same vide Judgment dated November 25<sup>th</sup>, 2013.

**5.** There is no dispute about the fact that being aggrieved by the Judgment of this Tribunal in Appeal No.2/2013 (WZ), the Applicant has preferred Civil Appeal

No.10843/2013, which is pending before the Hon'ble Supreme Court. In the meanwhile, the Applicant has filed instant Application, alleging that due to non-compliance of the conditions, enumerated in the EC, the Respondent No.5, (Project Proponent), has caused damage to environment in the area of village Tiroda. The Applicant alleges that substantial question relating to environment, is involved in the present Application.

**6.** Contesting Respondents, particularly the Respondent No.5, resisted the Application on various grounds. According to the Respondent No.5, revival of EC cannot be challenged by circumventing appellate jurisdiction under the guise of filing Application under Section 14 of the National Green Tribunal Act, 2010. The Respondent No.5, submitted that when earlier Appeal filed by the Applicant (Appeal No.2/2013) had been dismissed by this Tribunal and the matter is sub-judice before the Hon'ble Supreme Court, the issue regarding violation of conditions of the EC, in question, cannot be considered by this Tribunal. It is further submitted that the Application is devoid of merits.

**7.** We have heard learned Counsel for the parties in extenso. The main contention of learned Counsel for contesting Respondents, is that since the Applicant has preferred Civil Appeal No.10843/2013, under Section 22 of the National Green Tribunal Act, 2010, before the

Hon'ble Supreme Court, which is pending for disposal, the issues cannot be agitated by way of present Application unless and until the Hon'ble Supreme Court records any finding about non-compliance of the conditions, resultant damage caused to environment or otherwise. The MoEF also has taken stand that due to pendency of Appeal before the Hon'ble Supreme Court, present Application is not maintainable, nor desirable to be heard on merits.

**8.** We may mention here that learned Counsel Mr. Nikhil Nayyar and Senior Counsel Mr. Dhruv Mehta, appearing for the Applicant and the Respondent No.5, referred to several Judgments of the Apex Court. According to learned Senior Counsel Mr.Mehta, the Application is liable to be dismissed in *limine* though it is cleverly drafted to give go-by to the Judgment of this Tribunal in Appeal No.2/2013. *Per contra*, learned Counsel for the Applicant, would submit that the Application involves the issue of substantial nature, which can be delinked from the dispute raised in the Appeal No.2/2013, inasmuch as herein fallout of non-compliance of the EC conditions, is required to be examined, notwithstanding the fact that the EC may remain as it is. He argued that if the Applicant will await for filing of the Application till the Hon'ble Supreme Court, will finally decide the Appeal filed by him, perhaps

the present Application will be barred by limitation and, therefore, he will become remediless.

**9.** We do not propose to deal with the merits of contentions raised by Counsel for the parties. We also do not find it necessary to refer to the citations and deal with legal position as regards maintainability of the Application or otherwise. In our opinion, when the Judgment of this Tribunal in Appeal No.2/2013, is subjudice before the Hon'ble Supreme Court in Civil Appeal No.10843/2013, filed under Section 22 of the National Green Tribunal Act, 2010, the observations of this Tribunal, made in our earlier Judgment in Appeal No.2 of 2013, upon which the Applicant desires to lay foundation of his claim, are yet to be finally approved/disapproved by the Apex Court on merits. It would be premature, therefore, to entertain the present Application on merits, on assumption that the EC conditions have been violated by the Respondent No.5, (Project Proponent) as observed in our Judgment, rendered in Appeal No.2/2013. Obviously, proper course to be adopted is to stay our hands for the present till the Hon'ble Supreme Court will decide the Appeal pending before it, against the Judgment of this Tribunal in Appeal No.2/2013.

**10.** Under the above circumstances, we deem it proper to hold that further hearing of the present Application

deserves to be kept in abeyance. The Application is, therefore, adjourned sine-die and the parties be informed to give intimation to this Tribunal, as regards final outcome of the Appeal pending before the Hon'ble Supreme Court against the Judgment of this Tribunal, in Appeal No.2/2013, in the context of Civil Appeal No.10843/2013. M.A No.41/2013, is accordingly disposed of and present MA No.36/2013, stands adjourned sine-die. It be registered as Regular Application.

....., JM  
**(Justice V. R. Kingaonkar)**

....., EM  
**(Dr. Ajay.A. Deshpande)**

NGT